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III

TRENDS IN EUROPEAN SOCIAL LEGISLATION BETWEEN THE TWO WORLD WARS

The Labor Legislation in Republican Germany and the Social Reforms in France under the Popular Front Government — a Comparative Study.

INSTITUTE OF COMPARATIVE LAW
Ecole Libre des Hautes Etudes

Volume III

TRENDS IN EUROPEAN SOCIAL LEGISLATION BETWEEN THE TWO WORLD WARS

The Labor Legislation in Republican Germany and the Social Reforms in France under the Popular Front Government—a Comparative Study.

by

ALEXANDER LORCH

LL.D. (University Frankfurt, Germany)
LL.B. (University Paris, France)

Foreword by

B. Mirkine-Guetzévitch

Vice-President of the Ecole Libre des Hautes Etudes
Vice-Dean of the Faculty of Law and Political Science
Director of the Institute of Comparative Law

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FOREWORD

WHEN freedom was suppressed in France through Nazi barbarism and the Vichy dictatorship, French scholars, thanks to generous American hospitality, found a home on the free soil of the United States. Here, under the auspices of the New School for Social Research, thanks to its President, Alvin Johnson, the Ecole Libre des Hautes Etudes was founded which at the present time stands as one of the few free French universities in the world.

The Institute of Comparative Law of this French university is an international institution. It is international by virtue of its members, its directors and the interest it has shown in legal and social problems throughout the world. The primary aim of the Institute is to continue in its traditions the work of the Institute of Comparative Law of the University of Paris.

This third publication of our institute is devoted to a highly interesting study on comparative labor legislation. It investigates labor legislation in Germany during the period of the Weimar Republic and the social reforms achieved in France under the Popular Front Government. It analyzes both accomplishments from the aspect of comparative law, and it reaches conclusions which can be considered important in the light of the past as well as the future.

The author is convinced—and rightly so—that the work of social reform has been interrupted, but not destroyed, in Germany by the system of illegality, political brutality and social backwardness and in France under the heel of the Nazi invaders. It will be resumed after the collapse of National Socialist Germany and after the liberation of France from the Nazis and their Vichy puppet government. For this reason, Dr. Lorch's study assumes a place of importance among

the works dealing with social reconstruction in the post-war period.

The Institute of Comparative Law of the Ecole Libre des Hautes Etudes feels that it is filling a gap in the literature covering this field by presenting Dr. Lorch's study as the third volume of its publications.

The author acquired through scholastic research and practice the thorough knowledge of both, the French and German legal systems, especially labor law. Attorney-at-law at Frankfurt on the Main during the period of the Weimar Republic and professor at the State Academy of Labor of the same city from 1927 to 1933, he earned a high reputation through his teaching and publications. He came to France in 1933 shortly after the collapse of the Weimar Republic and in 1934 received the French law degree at the University of Paris. To such a well-informed jurist, law is never an abstract rule, but rather the merging of political and social factors which create the legal conditions of modern life.

Dr. Lorch was for many years a member of the Institute of Comparative Law in Paris. As the director of the Institute of Comparative Law of the Ecole Libre des Hautes Etudes in New York, I am happy to have Dr. Lorch's cooperation again in the field to which he contributed in the work of our institution in Paris.

The Institute of Comparative Law hopes to render a service to all students of labor law and social reform through its new publication and thus to assist in the solution of problems which have been, and will be, focal points in the preparation of a new era.

B. MIRKINE-GUETZEVITCH

Vice-President of the Ecole Libre des Hautes Etudes
Vice-Dean of the Faculty of Law and Political Science
Director of the Institute of Comparative Law.

PREFACE

IN MOST European countries the period following the First World War witnessed a great development in social reform. German labor legislation under the Weimar Republic was "probably the most highly developed in the world; it best represents the tendency of such legislation to become part of a coordinated program of government regulation."[1] Other countries more or less tended to follow the German pattern. France, however, remained backward for a long time. Its post-war labor legislation was enacted only as a remedy for specific evils. Yet, great progress was made under the Popular Front Government whose social reforms were among its most important as well as its most controversal accomplishments.

The object of this study is to analyze and compare the German and French legal systems as they show the most characteristic tendencies of social reform during the period between the two World Wars.

The monograph deals with neither National Socialist nor Fascist labor law. A legal system founded on the will of the "Leader" in disregard of the fundamental principles of the constitutional state does not deserve the name of law. Such a system which completely destroys "the generality of law and with it the independence of the judiciary has only the appearance of a legal system."[2]

Wherever possible, the study follows a uniform plan in order to facilitate comparison between the legislative measures in both countries. For the sake of clearness, the national legal systems are considered separately, preceded by a historical introduction.

Any social reform depends upon the spirit in which the laws are applied in practice. The labor legislation is therefore treated in all its aspects: not only the texts

of the various statutes but also the administrative practice as well as the relevant judicial decisions have been taken into account.

The monograph aims at showing by methods of comparative law the similarities and contrasts as well as the variations in the regulations of both countries. I have attempted to bring this out by inserting comparative references in their respective places in the running text rather than to add a special comparative survey with its accompanying repetition. It seemed more useful to conclude every chapter with a summary in which the functioning of the statutes and their social economic effects were critically reviewed.

Only the new features developed in the post-war period form the subject of this study which seeks to portray the structural character of both legal systems. No problem of importance has been neglected. Where a too detailed discussion would have exceeded the limits of this study, bibliographical references have been given.

Economic and political conditions in European countries differ so greatly from the situation in the United States, that it is difficult to draw conclusions from foreign experience. The experiments, however, were so far-reaching as to be of interest on their own account. Moreover, they deserve consideration in connection with similar American problems as in labor law the contrast between the Anglo-American and Continental law systems does not apply in the same degree as in other legal matters.

Acknowledgments

I am especially indebted to Professor Mirkine-Guetzévitch, Vice-Dean of the French Law School and Director of the Institute of Comparative Law of the Ecole Libre des Hautes Etudes who made this publication possible. My thanks are also due to Mr. Hyman Burstein, and to Mr. Hans J. Frank, of the New York Bar, who checked the whole manuscript and contributed to its linguistic improvement.

Chapter I

CHAPTER I

INTRODUCTION

(Basic Structure of the Social Reforms)

THE complex relations which prevail between labor and management under modern industrial organization of production stand in sharp contrast to the simple arrangements which governed the relations between master and man before the industrial revolution of the last century. The rise of large scale enterprises, many of which employed hundreds or even thousands of workers, had profoundly modified the relationship between employers and employees. The striking changes are reflected in the attempts, made in all industrial countries, to insure labor against the economic insecurities created by modern industry. The early attempts were limited to the protection of the life and health of the workers. Modern systems have become more and more involved in defining the status of labor in the factory and in industry as a whole. Before the first World War labor legislation was still in its initial stage. The greatest development took place in the post-war period in European countries. Among the numerous experiments, aiming at the democratization of labor relations, two require our special attention: the social reforms in Germany under the Weimar Republic and the French reforms under the Popular Front Government.

This work of reform in both countries was interrupted, in Germany by the advent of National Socialism in 1933, and in France through the events of the year 1940. I am convinced, however, that this work was only interrupted and not definitely destroyed.

German and French experience in the field of labor legislation brings into relief one of the most delicate

problems: the reconciliation of individual democratic liberties with collective action in the sphere of economic activity. For this reason both systems present not only a historical or theoretical interest but a most practical one.

Labor legislation in pre-Hitler Germany and the French social reforms under the Popular Front Government offer an astonishing similarity in many respects, despite the fact that the French reforms were put into effect 18 years later at a time when the social system in Germany had already been demolished by National Socialism. Both systems reflect the shift of power in favor of labor. The fundamental idea of both was the construction of a new social system within the framework of the existing economic structure. Both countries shrank from any intervention in vital basic questions in the economic field. They attempted to combine the system of individual private enterprise with the requirements for collective action in the field of industrial relations.

This introductory chapter summarizes the general structure of the reforms, the second chapter deals with their historical background, while the following are devoted to the organization and operation of the reforms.

The main features, marking the transition from the individual to the collective status of labor, are to be found in the introduction of collective bargaining, mediation and arbitration, and workers' representation in the shop.

Collective Bargaining[3] is based on the principle that labor conditions cannot be effectively handled through individual negotiations between employers and employees. Effective bargaining requires an approximate equality in the economic strength of the contracting parties. In order to offset to some extent the economic superiority of the employer and to bring about a certain balance in bargaining capacity, wage agreements should be settled, at least on the employees' side, by trade unions. This is the idea of collective bargaining.

The introduction of this measure in the domain of

law was one of the most important developments of the social evolution in pre-Hitler Germany and in France under the Popular Front Government. The law accorded to these agreements priority over the terms of an individual labor contract. Consequently the working conditions of an individual agreement were ineffective wherever they deviated from the terms of the collective agreement. In other words, the collective agreement laid down minimum labor conditions. The collective contract could be extended by administrative decree throughout an entire industry. By this means the agreement became binding upon all employers and employees in an industry, and had the character and effect of a minimum wage law. The establishment of minimum wages at the same time protected employers from unfair competition.

The movement to regulate employment relations by collective agreements had made less progress in France than in many other countries. Prior to 1936 only a small percentage (7½%) of the wage-earners were covered by collective agreements.[4] Such settlements were found in but a few branches of various industries. But even those contracts which did exist did not regulate all working conditions and the employers were virtually free to evade the consequences of the agreement they had concluded. Furthermore, such agreements could not be extended bevond the sphere of the contracting parties.

A similar situation prevailed in Germany prior to the Revolution of 1918. The new legislation in both countries put an end to all defects and shortcomings of the previous status. With the shift of power in favor of labor in Germany in 1918, in France in 1936, employers retracted from their traditional opposition to trade-union recognition and collective bargaining. It is a most interesting coincidence that legislative sanctions were preceded in both countries by famous agreements between the employer and labor organizations providing, among other matters, for the recognition of collective bargaining: in Germany, the famous agreement

of the *Zentralarbeitsgemeinschaft* of November, 1918; in France, the fundamental *"Accord Matignon"* of June, 1936. In both countries these agreements were hailed by trade-union leaders as *Magna Chartas* of organized labor. The importance attached to the new legislation in France is indicated by the fact that it was entitled "The Modern Status of Labor" *(Le Statut Moderne du Travail)*. The vital part of this reform was the Collective Agreement Act, one of the new government's first legislative measures.

But recognition of collective bargaining could not in itself solve every problem of industrial relationship. The second ruling principle of the reforms was *mediation and arbitration.*[5] Employers and trade unions can be brought face to face and compelled to discuss labor conditions. But when their negotiations fail, an additional machinery is necessary to bring about a settlement. Mediation and arbitration are the measures which assure peaceful settlement of labor conflicts. The breakdown of negotiation leads to mediation; the failure of mediation leads to arbitration. The arbitration system supplies the necessary complement to collective bargaining. This procedure has been described[6] as a kind of "flying ambulance squad," appearing wherever a collision occurs between labor and management which threatens to disturb the productive activity. It is characteristic of the German system that mediation and arbitration proceedings were combined, in contrast to the French system where the two proceedings were separated. In the event that a collective dispute was not settled through negotiations, the arbitration authorities had power to issue an enforceable order to regulate employment conditions.

In both countries it was intended that the regulation of working conditions be left primarily to the trade unions and employer associations. But in practice compulsory state intervention played an ever-growing part. It has been stated that the increasing role of the arbitration authorities in shaping labor conditions facili-

tated the transition to the totalitarian system in Germany.[7] This claim may be exaggerated, but the fact cannot be denied that the parties, relying upon continuous state intervention, evaded responsibility for their proper action and weakened the militant spirit of organized labor. It is worthy of note that French and American labor, in contrast with German trade unions, were always opposed to compulsory arbitration upon the ground that this procedure impeded trade union activities. As a matter of fact, the original platform of the French Popular Front did not include compulsory arbitration. However, as the voluntary arbitration system proved unsuccessful in France, due in part to the illegal occupations of factories which spread on a large scale in 1936, French labor changed its hostile attitude toward compulsory arbitration and the Government enacted this measure in order to stop the strikes. Although the French arbitration system was far too complicated, it succeeded in reducing industrial warfare to a large degree.

The third ruling principle of the social reforms was the *workers' representation in the shop.*[8] The introduction of worker councils in Germany, and workers' delegates in France, was the most significant reflection of the new trend in labor legislation and completed the new system of industrial relations. During the revolution in November, 1918, workers and soldiers councils wielded power in Germany. With the meeting of the National Assembly the political activity of the councils came to an end. The councils were, however, maintained in the social and economic field and were invested with a two-fold function. On the one hand, they had to represent the economic interests of the workers in so far as such interests were not already represented by the trade unions. On the other hand, they had to secure the coöperation of the workers in the mechanism of production. There were consequently two types of duties: economic functions in the interest of production, and social functions connected with labor questions. The

idea was to give labor a sense of dignity and organic relationship within the productive set-up of modern industry.

In the light of experience during the short period in which the councils operated, it must be noted that they never exercised any appreciable influence in questions of production, due to the lack of understanding of business problems. This part of the works council law was a constructive experiment calling for expert knowledge which the great majority of employees did not possess. The councils achieved, however, considerable results in the social field. They secured valuable guarantees for the workers, affording them far-reaching protection against arbitrary dismissal.

In contrast to the German system, which desired to implant in the works councils the seeds of social reform, the aims of the French system were rather limited. The French law did not invest the worker delegates with any economic functions, and even in the social field their rights were confined to the task of presenting to management such individual complaints as could not be settled directly.

These are, briefly summarized, the main features of the reforms.

FOOTNOTES TO PREFACE AND CHAPTER I.

[1] Edwin E. Witte "Laborlegislation" in *Encyclopaedia of the Social Sciences*, vol. 8, New York (1935), p. 661.

[2] cf. the excellent analysis of the so-called national socialist law by Franz L. Neumann *Behemoth—The Structure of National Socialism* (New York, 1942), p. 440 et seq. where it reads: "Since law is identical with the will of the Leader, since the Leader can send political opponents to their death without any judicial procedure and since such an act is glorified as the highest realization of justice, we can no longer speak of a specific character of law." "Absolute denial of the generality of law is the central point in national socialist legal theory" (p. 452). "Such rules are not law but arbitratorship—manipulations by terror in the form of law" (p. 453).

[3] cf. infra p. 34 et seq.

[4] "Collective Agreements in France" in *International Labor Review* 1935 p. 700 et seq.

[5] cf. infra p. 75 et seq.

[6] Weddigen "Angewandte Theorie der Schlichtung" in *Jahrbuch für Nationaloekonomie und Statistik*, March 1929, p. 354.

[7] cf. N. Reich *Labor Relations in Republican Germany*, New York 1938, p. 155.

[8] cf. infra p. 116 et seq.

Chapter II

CHAPTER II

THE NATIONAL AND INTERNATIONAL ATMOSPHERE IN WHICH THE SOCIAL REFORMS WERE PASSED

NONE of the modern questions connected with social reforms can be correctly understood unless they are first examined in the light of their historical development. To realize the importance and significance of labor legislation in Republican Germany and in France under the Popular Front Government, it is necessary to recall the national and international atmosphere in which the social reforms were passed.

A.

Germany[1]

The events of November, 1918, brought to a close an entire epoch of Germany's history. The military power had been broken. The monarchical system had collapsed. The first Republican Government was elected at a general meeting of the Berlin Workers and Soldiers Council, acting as representatives of all revolutionary elements in the Reich. The Government depended for its immediate support upon the Majority Social Democratic Party and the Independent Social Democratic Party, each having three representatives in the Cabinet. These six men who composed the Council of People's Commissaries *(Rat der Volksbeauftragten)* were the political rulers of Germany.

A complicated task of reconstruction awaited the new government as the result of the military defeat and the hopeless economic conditions which prevailed at that time.

Germany, densely populated, with comparatively limited territories, is dependent upon foreign countries for its means of livelihood. The balance of foodstuffs and raw materials in pre-war days was paid for by the yield of its flourishing export trade and by the interest paid on its capital abroad. The World War destroyed Germany's export trade. The considerable dearth of raw materials and foodstuffs, which had existed during the latter part of the war, did not disappear with the conclusion of hostilities since the Allies permitted only small quantities of goods to pass into Germany. The victorious Powers in maintaining the blockade wished to keep Germany well under their control until a definite peace treaty had been signed. Even if the Allies had allowed importation in larger quantities, Germany's stock of gold was not nearly sufficient to pay for the necessary purchases abroad. It was a hopeless task for German industry after November, 1918, to find any means of payment for the foreign supplies that were of vital necessity to the German people. To this was added the reduction of its sources of supplies caused by the loss of Alsace-Lorraine, the Polish districts and her colonies. A further evil was the scarcity of transport. Railway material had been completely worn out during the war.

All these difficulties were increased by strikes which spread on an important scale to all parts of the country. The workers wished to take advantage of the shifting of political power to secure a new economic and social structure. A great wave of unrest swept throughout Germany during the months following the armistice. The miners' first demand was that the pits be nationalized. This demand was implemented by strikes and passive resistance. The consequence was a noticeable shortage of coal, one of the most acute problems during the winter 1918-19.

Such was the economic situation when the Workers and Soldiers Councils wielded the political power throughout Germany. The great political question was

whether the councils would continue to rule in Germany with a resulting truly socialist republic, or whether a National Assembly should be convoked in order to stop the Revolution and to establish a democratic state.

In surveying the internal political conditions after the military defeat it may be said that in those days the new rulers were not confronted with any opposition worthy of mention.

The losers in the November Revolution were the supporters of the old Prussian Feudal System. The great landowners, especially those east of the Elbe, were alarmed at the prospect of confiscation of their estates, and the great industrialists were equally powerless. The state authority that had hitherto protected them from the demands of the workers no longer existed. They feared a future that would bring with it the socialization of industry accompanied by a partial or complete expropriation of their factories. Having no alternative they agreed to work in common with the trade unions and to accept the social demands of the workers—in brief, they were ready to make any concession that might circumvent expropriation.

The central parties inasmuch as they had at least participated in the overthrow of the old order in Germany in October, 1918, under the Chancellor Prinz Max of Baden, were forced to stand aside and watch the seizure of the political power by the socialist parties whose members composed the new Cabinet, while the former liberal and center Secretaries of State were admitted to their councils only as expert advisers.

The socialist parties were the masters of the political field. What was their attitude to the question of the new form of political and social reconstruction? They had been divided into two parts. The large majority advocated a democratic republic, with the gradual nationalization of those industries considered "ripe for this purpose." The minority demanded a thorough-going socialization, with the Councils wielding legislative, executive and judiciary power under a Soviet Republic.

Majority socialists, trade unions, as well as the right wing of the Independents, supported parliamentary democracy. The Social Democrats regarded government by councils as an arbitrary dictatorship of the minority over the majority of the nation. For them the events in Russia since 1917 afforded a warning to be taken rather than an example to be followed. This political view was shared by the majority of the trade unions whose leaders in Germany were always closely linked to the Social Democratic Party. The right wing of the Independent Social Democratic Party was in close sympathy with them. The Councils were looked upon merely as a transitory system. They were opposed to the idea of a government by councils cherished by the left wing of the Independent Socialists and Communists. In the opinion of the majority leaders government by councils would lead to Bolshevism. The historical ideal of the German Social Democratic Party had been a democratic republic. They wanted to assure a peaceful transition from autocracy to democracy. They would have nothing to do with those political groups that aimed at the establishment of a dictatorship of the proletariat.

In order to settle the conflicts between the various groups and to determine the political future, a general congress of Workers and Soldiers Councils was called. The congress met in Berlin in December, 1918. The question to be decided was whether Germany should be governed in accordance with the will of the majority, or by a dictatorship of a minority. The Council of People's Commissaries which advocated the introduction of a parliamentary Republic and the election of a National Assembly was backed by an overwhelming majority. More than 75% of the congress members expressed themselves against the adoption of the councils as a permanent form of government and in favor of the election of a National Assembly.

The National Assembly that was to vote for the constitution of the German Republic was elected on January 19, 1919. The election results still reflected the

public opinion prevalent in the foregoing months. Those who sympathized with the Revolution and the Republic achieved a great success. The socialist and democratic parties, and consequently the Revolution, were approved by 85% of the electorate. This result dispelled all lingering doubts as to the wishes of the people.

At first glance it might seem peculiar that although the events of November, 1918, resulted in a decisive influence of the socialist parties which seized and held the political power during these months, the German revolution revealed few traces of a truly socialist character. What was the clue to the astonishing fact that even the great majority of the socialists were satisfied with a democratic republic, that they shrank from any structural intervention in the economic field, and that they rejected the idea of a truly socialist state? The precarious situation in the economic and international field was not the only explanation. There were other and deeper reasons. The German socialist parties were lacking in any revolutionary tradition and had no experience in managing state affairs in a responsible manner. The new rulers were confronted with a task which found them completely unprepared.

The Social Democratic Party was organized at a time when there was no possibility of revolutionary action in Germany. This was especially true after the end of the epoch of the anti-socialist laws in 1890. They considered the safeguarding and improving of the condition of the working class *within the framework of the existing state* their principal task. Formal radicalism exhausted itself in a continuous polemic directed against the monarchy, its organs, and against militarism. All cooperation even with the central parties was utterly condemned. Nevertheless, they did not realize that they might be called to power to decide problems of foreign policy, civil administration and economic problems as a whole. The German Social Democratic Party unconsciously regarded suffrage and social policy as most important and let other questions fade into the back-

ground. This one-sidedness was destined to have bitter consequences in the short period of the German Republic.

An agrarian reform could undoubtedly have been introduced into Prussia especially east of the Elbe. Such a measure might have made the democracy sure, and might have struck the final blow to the power of the feudal aristocracy. The new government was unwilling to act in this way. They touched neither the economic power of the East Elbian landowners nor the property of the heavy industrialists. So, shrinking from any intervention in vital basic questions, they spared the very forces which in the following years were to undermine the Weimar Republic.

But the new government displayed a remarkable activity in the field in which lay the traditional interest of the Social Democrats and the trade unions. The latter had for decades worked for the improvement of labor conditions. In this field they had already achieved notable results both before and during the war. To this sphere were confined their main activities during the revolution. The realization of important social reforms constituted the most noteworthy feature.

A series of new decrees was enacted to cope with the new conditions. The first step was to abolish all restrictions depriving labor of equal rights. The opposition to any collaboration with labor characterized the social policy of Imperial Germany. Now all restrictions on freedom of organization were outlawed, and the trade unions were recognized as the authorized representatives of the workers. All special legislation against the interest of workers, particularly agricultural workers and domestic servants, was abrogated. Formerly in the field of labor protection limited working hours had been confined mainly to women and children. Now all adults were covered by the introduction of a maximum eight-hour working day. The workers were protected from arbitrary dismissal. Demobilized soldiers were reinstated in their former employment. An adequate pub-

lic employment system was established. If in spite of these measures a worker could not find employment, unemployment relief was available for his support. The introduction of collective bargaining, compulsory arbitration and workers representation in the shop into the domain of law was the most important and far-reaching development. In the sphere of social reforms in which the new rulers were well versed they proved effective and achieved important reforms. In the words of Edwin E. Witte,[2] outstanding economist, "the greatest development of labor legislation in the post-war period took place in Germany." The social reforms introduced at that time in Germany were moreover exemplary and served as a model for other countries. The main French social reforms realized in 1936 by the Popular Front Government were patterned after the German social system. But "in drafting its legislation, the German Government forgot that social reform is like an organism that cannot exist without air and that its success is dependent upon the general situation."[3] Power, it was soon discovered, was easier to win than to keep. It would lead beyond the scope of this resumé to discuss and analyze the reasons for this further development. But when historians will have to indicate what was lasting and what ephemeral in its achievements, the social reforms will appear as the predominant feature of its work of reconstruction.

B.

France[4]

The victory of the People's Front at the elections in May, 1936, whose government had introduced the social reforms, was prepared by the successful development of the Popular Union *(Rassemblement Populaire)* from 1934 onwards. In reviewing the factors that led to this political transformation, we will find that the events of the *"six février"*[5] had been of paramount importance. The conditions of strain in which the nation had lived

between this historic day and the 1936 elections brought about the victorious coalition of the People's Front.

We are accustomed to think of France as primarily an agricultural country, and that is still true in the main. France, traditionally a country of rich agriculture, had likewise become a great industrial nation. Its subsoil holds coal, iron and bauxite, the source of aluminum, of which France is the chief producer. Powerful enterprises are spread across the land: blast furnaces, steel mills, factories for machine-making for chemical products and textiles. And her many highly specialized products such as Lyonese silk, fine needlework, fashions and pottery were highly appreciated in other countries.

In this land, endowed with wealth, constant internal struggles have always played a leading part and shown a more intensive character than elsewhere. At the beginning of 1934 unrest and discontent arose, creating an atmosphere of high tension. It is true that the shock with which the French learned that they were not immune to the economic troubles of the world was less profound than in other countries and did not lead to a strengthening of the fascist groups, as in Germany. On the contrary, the results of the election in 1932 showed that the tide was turning to the Left. Moreover, the French people with their intensely individualistic character were probably as strongly opposed to a totalitarian system as any people could be. Nevertheless, Hitler's success in 1933 in Germany nourished within the ranks of the so-called "patriotic leagues" the idea of revolution from the Right. The "Stavisky Scandal," as well as others, and the "weakness of the Chamber" furnished the Right with arguments for their campaign, resulting in an increased activity. During the winter months of 1933-34 there were numerous signs pointing to the organization of a coup d'Etat prepared by the various reactionary and semi-fascist groups *(Camelot du Roi, Croix de Feu, Solidarité Française)*. The dismissal of Chiappe, the Paris chief of police, was the match

that fired the powder. His comparative kindness to rioters of the Right made him highly suspect to the Left. But Chiappe was a great figure in Paris society. His dismissal provoked vigorous protests. Thirty deputies of the Seine signed a joint manifesto charging the Prime Minister (Daladier) with sacrificing Chiappe to his need of a majority.

On February 6th the Cabinet met the Chamber in an atmosphere of gloom. While the session was going on, reactionary organizations which had summoned their members were demonstrating in the Place de la Concorde. They tried to approach the Chamber which on this very night accorded a vote of confidence to the Government by 343 votes to 237. The demonstration soon turned into a riot. Several attempts were made to force a way into the Chamber across the bridge which separated the Palais Bourbon (Chamber) from the Place de la Concorde. The police were forced to fire, killing several persons and wounding hundreds. By midnight the last attack had been repulsed. The Chamber and the Government were saved. But this critical day left deep traces in the political life of France.

Until this "*six février*" the communist party leaders had even refused collaboration with the socialists in defense of the Republic against Fascism. But the events of this day, as well as the German example before their eyes, brought them together. Their immediate reaction was the decision to join in a general strike; its purpose was to show that the workers were determined to defend the Republic. In less than a week after February 6th they had rallied tens of thousands of workers in the Paris district. On February 12th a powerful demonstration against the "Patriotic Leagues" which passed off without incident did not fail to impress the population. And—of more permanent importance—these critical days sowed the seed that was to develop into the "Common Front" and subsequently into the "Popular Front" of the 1936 elections.

Once the common front between socialists and com-

munists had been constituted, the next important step for the organizers of the Popular Union *(Rassemblement Populaire)* was to bring in the other great party of the Left, The Radical Socialists, a democratic party strongly opposed to socialist principles, notwithstanding its name. Indeed, the fear of a new *"six février"* was not confined to the socialist parties. The attempt to overthrow a ministry with a safe majority in the Chamber by rioting groups of the Right was a great shock to the Radicals, the nominally dominant party in the Chamber. Likewise it instigated all groups and parties of the Left to unite. The coalition of these forces was brought about through the threat to democratic liberties which the Left discerned in the increased activity and growth in numbers of the various leagues.

A few weeks later a joint congress of the CGT *(Confédération Générale du Travail)* and the CGTU *(Confédération Générale du Travail Unitaire)* with the purpose of re-establishing the labor front which had been broken in 1920, took place. The French labor movement had been divided into two important national federations of trade unions, the CGT and the CGTU. The CGTU was affiliated with the Communist party. These powerful unions, reunited in autumn 1935, joined the *Rassemblement Populaire.*

Such was the situation on the eve of the spring elections of 1936. The Right entered the electoral battle to a certain degree depressed. The refusal of the *Croix de Feu* to run candidates meant that the body which had diverted to itself so much of the energy of the conservative forces had no intention of working in a parliamentary manner, nor of attempting the alternative—revolution. It became clear that the Right had no party properly organized, whereas the Left had got together, in an electoral alliance, all the important political parties and the reunited trade unions.

In January, 1936, it published its program asking for legal measures against the patriotic leagues, nationalization of war industries and of the Bank of France,

reform of the stock market, creation of a central wheat board and, with respect to social reforms, trade-union freedom, collective bargaining, shop committees, a forty-hour week with no reduction in weekly pay, holidays with pay amounting to one or two weeks annually. This program was largely inspired in its principal features by a plan elaborated by the CGT.

The chances of the Left were increased by an event —often overlooked—that made the socialist leader Léon Blum a martyr to his followers. Some of those attending the funeral procession of Jacques Bainville—historian and leading member of the Royalists—noticed M. Léon Blum together with a colleague and his wife in a car. They left the funeral cortège and attacked the socialist leader who was badly injured. The police arrived in time to save him from what might have been a tragic consequence. This attack discredited the Right.

The final poll on May 3rd confirmed the expectation that the chances of the Right had greatly diminished. The elections gave to the combination of the Popular Front a large majority with complete mastery of the parliamentary situation. Genuine fear of Fascism had brought about this success whose scale was unexpected, but equally unexpected were the results for the individual parties.

The Socialists became the strongest party. The Communists doubled their votes; in addition, thanks to the working of their electoral alliances, they received seven times their previous representation. This and the setback of the Right was the most striking aspect of the election.

The new Chamber was not only the most progressive which the Republic had ever known, but for the first time the Socialists formed the largest group within it. They accepted the responsibility for forming a government. The premiership fell to Léon Blum as the leader of the strongest party. He approached the Communist Party with the request that it participate in the government, but it refused in order to preserve its lib-

erty of action. Faced with a similar request, the CGT took refuge behind its tradition and its statutes. So, the Cabinet was composed of only Socialists and Radicals but it was supported by a large parliamentary majority. With this majority it was able to execute the program accepted by the three parties which had been the principal elements of the Popular Union.

When the Blum Government presented itself to the Chamber on June 6, 1936, it declared: "The ministry is the expression of the People's Front majority which the country has elected. Its program is a joint program subscribed to by all the parties composing the majority and the sole problem before it will be to perform the program into facts."

The result was a flood of bills which were passed by the Chamber. The Leagues were dissolved. War industries were nationalized. The Bank of France was made more democratic in its internal structure and at the same time placed under closer governmental control. A National Wheat Board was established in order to revalue agricultural products and to fix minimum prices. And in the social field a series of new labor laws was enacted to meet the growing demands of the workers. As early as June, 1936, the law on collective bargaining was promulgated. The right of trade-union freedom and the right of the workers to be represented in factories by workers' delegates was upheld. Paid holidays were assured and the work week was reduced to forty hours without any diminution of wages. At the end of the year 1936 the bill for compulsory conciliation and arbitration in industry and commerce was passed. This concluded the series of social reforms introduced by the Government.

Thus the first months saw positive improvements of working conditions and the restriction of the power of the opponents of the People's Front. However, the Government's majority was composed of most heterogeneous elements, each with its own point of view—a fact which threatened the solidity of the coalition. They were

united only in the defense of democratic liberties. Once the election was over and purely political questions were replaced by economic problems, understanding between parties of such divergent philosophies caused considerable difficulty.

It is true that there was a minimum program on which the *Rassemblement Populaire* had agreed. And the Prime Minister declared that the new Government had merely the mission of carrying out this limited program and not of changing the basis of society. Nevertheless this time was to prove the most revolutionary period that France had seen for many years.

A great wave of strikes began before the Government was formed. The special form of pressure developed was the occupation of factories. These so-called stay-in (or sitdown) strikes, partly accompanied by scenes of violence, brought about a sharp reaction of public opinion and irritation on the part of the population. The Government recognized the illegality of the occupation of factories. But no authority opposed it and the Government hesitated to expel the occupants. This toleration of illegal violence disrupted the solidity of the Government. Had not the futile occupation of the Italian factories in 1920 been the preliminary to Fascism? When the Blum Government was compared with that of Kerensky (the Russian Socialist leader who preceded the Bolshevists), the Prime Minister sounded the warning: "I really hope that the Government which the Socialist Party is going to form will not be a 'Kerensky Government.' But if it were to be so, believe me, in the France of today, it would not be a Lenin who would replace it."

But not only strikes caused disturbance in the economic life. The most serious problem was the financial situation. The spectre of financial difficulties had already loomed in the preceding years. Now the financial situation grew worse.

The Government had solemnly promised not to devaluate the franc. It had hoped to avoid de-valuation

of the currency through a business revival which was expected as a result of its deflationary measures. The Prime Minister declared: "You will not wake up one morning to learn from the posters of the walls that the franc had been de-valuated." The Minister of Finance (V. Auriol) made a similar declaration in the Chamber. Less than four months later the Government decided to de-valuate the franc by 30%. It was a serious commitment of the moral authority of the Government. The reputation of the Socialists as "killers of currency" seemed to be confirmed. The Radicals found themselves involved in opposition to the economic and financial theories of the Government under "socialist direction" and to the mishandling of the financial problems. More than a quarter of the total gold reserve had been exported between June and September, 1936. The devaluation did not prevent a further ebbing of the gold stock. The franc became an object of speculation and the reserves of the Bank of France underwent a violent attack. Some members of the Ministry dallied with the idea of exchange control. This idea frightened the people still more. Five millions had voted for the candidates of the People's Front. In the ranks of this majority were thousands of electors who, confronted with continued disorder through illegal sit-down strikes and financial disaster, said: "We did not vote for this." They were converting their francs in gold or dollars, thus causing an even more serious strain on the currency.

The financial crisis made it necessary for the Prime Minister to announce in March, 1937, the so-called "pause." The pause was explained as a temporary interval for consolidation. But it was soon apparent that it was a permanent halt. The Premier appealed to Parliament for "plenary powers." The Chamber accorded the powers, but the Senate, opposed to further economic experiments, refused. Mr. Blum resigned.

The year had seen a steady decline in confidence and energy. The formal maintenance of the People's Front in the ensuing years, mostly under "radical direction,"

was due only to the critical international situation. The course of international events is too well known to require re-telling. There were many faults to which the failure of the "*Experiment Blum*" can be attributed; faults on the part of all partners of the People's Front coalition as well as on the part of its opponents. It is too early to evaluate the events of that period in all their details.

The purpose of this resumé is moreover not to give a complete historical survey but to show only the broad outlines of the situation as the base for the understanding of the political atmosphere in which the social reforms were passed.

FOOTNOTES TO CHAPTER II.

[1] E. Barth *Aus der Werkstatt der deutschen Revolution* (1920). L. Bergstraesser *Geschichte der politischen Parteien in Deutschland*, 6th edition (1932). E. Bernstein *Die deutsche Revolution* (1922). E. Kuttner *Von Kiel bis Berlin* (1918). O. Landsberg "Der Rat der Volksbeauftragten" in *Ebert und seine Zeit* (1927). E. Menke-Glückert *Die Novemberrevolution von 1918* (1919). Richard Müller *Vom Kaiserreich zur Republik* (1924); *Der Bürgerkrieg in Deutschland—Geburtswehen der Republik* (1925). Neter "Der seelische Zusammenbruch der deutschen Kampffront" in *Süddeutsche Monatshefte* (July 1925). G. Noske *Von Kiel bis Kapp* (1920). K. F. Nowak *Der Sturz der Mittelmächte* (1921) *Das Chaos* (1922). A. Rosenberg *Die Entstehung der deutschen Republik*, 2nd edition (1930), translated into English under the title *The Birth of the German Republic*, Oxford University Press (1931)—*Geschichte der deutschen Republik* (1935), translated into English under the title *A History of the German Republic* (1936). H. Schultze-Pfälzer *Von Spa nach Weimar* (1929). H. Stroebel *Die deutsche Revolution* (1920). E. Volkmann *Revolution über Deutschland* (1930). F. Zinnecke "Vom deutschen Revolutionsparlament" in "Historisch-politische Blätter", vol. 163 (1919). In English language: G. P. Gooch *Germany* Modern World Series (1925). H. Quigley and R. T. Clark *Republican Germany* (1929).

[2] Edwin E. Witte "Labor Legislation" in *Encyclopaedia of the Social Sciences*, New York, 1935, vol. 8, p. 661.

[3] Arthur Rosenberg *A History of the German Republic*, p. 39.

[4] D. W. Brogan *The Development of Modern France*, 1870-1939 (1940). H. C. Daniels *The Framework of France* (1937). P. Dominique "Le Front Populaire et les Partis" in *Europe Nouvelle*, 1936, p. 1200 et seq. C. Dutt "People's Front and the Class Struggle in France" in *Labor Monthly*, January, 1939, p. 35 et seq. L. Joxe "Le Front Populaire" in *Sciences Politiques*, May, 1937, p. 115 et seq. R. Pinon "Le Gouvernement Blum et le Syndicalisme"in *Revue des Deux Mondes*, May, 1937, p. 469 et seq. David J. Saposs *The Labor Movement in Post-War France* (1931).

[5] The so-called "Patriotic Leagues" attempted to overthrow the Republican Government on February 6, 1934.

Chapter III

Chapter III

COLLECTIVE BARGAINING

A.

Germany

I.

Origins and Development[1]

(Collective Bargaining and Trade Union Movement)

The history of collective bargaining runs parallel to the history of trade unionism in many respects. Prior to the First World War neither collective agreements nor trade unions were recognized by law as specific institutions. A study of German trade unionism shows that for approximately the entire life of the German Empire trade unions had no legal status: they were tolerated but not recognized. However, economic factors proved more powerful than statutes. The trade unions grew and extended their organizations throughout the Reich, thus creating a sphere of their own outside the law, until finally the German Republic and its Constitution conceded freedom of association to all.

The Industrial Code *(Gewerbeordnung)* passed by the Reichstag of the North German Confederation in 1869 laid down the following provisions which remained unchanged until 1918:

> "All prohibitions and penalties imposed on persons engaged in industry, as well as industrial employees, journeymen or factory workers in connection with agreements to organize for the purpose of securing favorable wage and working conditions especially by means of stoppage of work or dismissal of workers, shall be removed.

"Every participant is free to withdraw from such agreement and associations and these can not form the basis for either an action or a defense.[2]

"Any person compelling or trying to compel others by means of bodily force, threats, insults or boycotting, to participate in such agreements or to carry them out or who prevents or tries to prevent others by similar means from withdrawing from such agreements is punishable with imprisonment of not more than three months, unless the General Penal Code provides a heavier penalty."[3]

The right of association was based on these provisions. Section 152, subsection 1, proclaimed the freedom of association, but subsection 2 declared that the associations had no legal status. Not only were the unions deprived of legal protection which all other associations enjoyed, but even worse, protection was afforded to their opponents.[4] The spirit of these provisions was manifested in the official interpretation which described it as the "indispensable corollary" to freedom of association.[5]

This statute was likewise inadequate in other respects. It applied only to *industrial* workers and excluded civil servants, persons engaged in commerce, the free professions, agriculture, as well as industrial white collar workers. Furthermore, the statute, as a federal law, took precedence over State laws. The States, especially the largest, Prussia, had sufficient leeway in hampering trade union activities by virtue of the discretionary powers of their administrative and police authorities. Consequently, the actual freedom of association was limited as it depended entirely upon the will of the administration where too often a hostile attitude prevailed.

In contrast to the United States where trade unions grew directly out of the needs of the workers and developed independent of political parties, the German worker associations, owing to their origin, were politically bound to the socialist party. Therefore, when in 1878 the Anti-Socialist Act called for the dissolution

of all associations with socialist aims and the confiscation of their property, it was largely applied to trade unions and only a few escaped dissolution.[6]

Subsequent to the repeal of the Anti-Socialist Act in 1890 there was no lack of attempts to restrict even this small area in which freedom of association was tolerated. In 1897 a great anti-trade union campaign set in. The German Ministry of the Interior suggested the amendment of Section 153 of the Industrial Code in order to give those who were willing to work better protection against "strikers and agitators." Two years later, a bill was introduced in the Reichstag entitled "Act for the Defense of Industrial Labor Conditions" commonly known as the "Penal Servitude Bill" *(Zuchthausvorlage)* providing very severe penalties for picketing which was considered tantamount to physical compulsion. The rejection of this bill by the Reichstag frustrated a vital attack at freedom of association.

Although there were no further legislative restrictions, administrative authorities as well as law courts were always eager to harass trade union development. The "Puttkammer Edict" of August 11, 1886, ordered local police authorities to intervene energetically for the "protection of persons willing to work," thus giving the police a welcome opportunity to interfere in the sphere of trade union activities.

There was a right of appeal to the courts against the acts of the administrative authorities. However, the attitude of the courts was no less unfavorable to labor. The courts at that period were guided by their conservative predispositions when dealing with labor matters. In their eyes the struggle for better working conditions was inconsistent with "divinely appointed dependence." The courts went so far as to consider the threat of a strike as an act of punishable extortion.

The restrictions on the right to organize were such that Brentano, a noted economist, was moved to characterize them with a phrase which has become a byword: "The German workers enjoy the right to organize but

if they make use of it, they become outlaws."[7]

Despite these obstacles the unions could not be checked, nor could oppression stem the growing increase in their membership. After the repeal of the Anti-Socialist Act in 1890 the Free Trade Unions comprised about 300,000 members. By 1913 they had increased to 2,500,000.

Aside from the Socialist Free Trade Unions there existed two other groups prior to the war: the National Trade Unions (also called the Hirsch-Duncker Unions after their founders) and the Christian Trade Unions. Both were opposed to international socialist ideas and emphasized their strictly national outlook. In 1913 the Christian Unions claimed about 300,000 and the Hirsch-Duncker Union 100,000 members.[8]

The Christian Unions were composed mainly of Catholics, and their chief strength rested in the industrial districts of the Rhineland and the Ruhr. Just as, politically, the Free Trade Unions were associated with the socialist parties, the members of the Christian Unions adhered to the Catholic Centre Party. The Hirsch-Duncker Unions, of liberal tradition, were in sympathy with the aims and methods of the Christian Unions.

Although these unions were not affected by political prosecution, their membership remained insignificant as compared with the strong Free Trade Unions which played the decisive part in the development of organized labor.

In contrast to labor, German *employers* showed little inclination to organize until the beginning of this century through fear of competition as well as other particular considerations. In 1904 a widespread strike of textile workers in Saxony changed the employers' attitude. The spirit of sacrifice and determination displayed by the strikers who were strongly backed by their powerful unions, started a strong counter-movement on the part of the employers leading to the amalgamation of scattered local organizations into the "Centre of German Employers Association." A second federation, the

"Union of German Employers Associations," soon followed. The latter embraced those groups of employers in the finishing industry who had little liking for the reactionary extremism of the leading iron and textile industrialists of the earlier National Federation (Centre). In 1913, however, both bodies finally merged in the "Federation of German Employers Associations" comprising 61 associations with 78,000 members employing about 2,300,000 persons.[9]

Both the unions and the employer associations were strongly centralized.

Whereas trade unions declared themselves in favor of collective agreements, employers as a whole definitely opposed them, as such agreements implied the recognition of trade unions both as contracting parties of equal standing and as qualified labor representatives. But in spite of all opposition the circle of employers adhering to collective bargaining continued to widen. By the end of 1913 about 2,000,000 workers were already covered by collective agreements. This number, it is true, was still lower than the number of members of the Free Trade Unions alone which at that period equalled 2,500,000. Nevertheless, they covered a significantly higher percentage of workers than in France where, even in 1936, before the rise of the Popular Front Government only 7.5% of the nation's workers were employed under collective agreements.

During the First World War the position of trade unions underwent a significant change. It became increasingly evident that the State could not manage without the support of labor organizations and had to procure their coöperation in many respects. Hitherto the Free Trade Unions had been struggling—often unsuccessfully—to defend the right of association against employer opposition which was encouraged by the State authorities. Now they found themselves courted by the Government. The Minister of Interior stated that no intention to obstruct trade unions existed, that in actuality the Government considered itself fortunate in hav-

ing large labor organizations upon which it could rely in any emergency.[10] Consequently in 1916 an amendment to the Association Act[11] assured trade unions that they would not be treated as political associations because of their political convictions. Thus the restrictions which had been used by the administrative authorities before the war, in order to hamper trade union activities, were removed.

Other concessions were made in order to maintain a united "home front." The "Auxiliary Service Act"[12] *(Hilfsdienstgesetz)*, passed in the same year, was the first legislative enactment which gave unions and employer associations legal standing. As a result the trade unions were able to penetrate into industries which hitherto had been closed to collective bargaining. Finally, in May, 1918, Section 153 of the Industrial Code that had served as the outstanding legal weapon with which to paralyze union activities, was repealed.[13]

All these measures, however, were only of a limited nature and until the Revolution of November, 1918, unions and collective agreements did not receive positive recognition. The act which marked the most vital progress in the development of trade unionism and collective bargaining was the People's Commissaries Declaration of November 12, 1918, affirming the right of all workers, even those in civil service and government employ, to form associations. A few days later, on November 15, 1918, the famous agreement of the Central Joint Labor Council *(Zentralarbeitsgemeinschaft)* recognized the trade unions as authorized labor representatives and specified that working conditions were to be fixed by collective contracts. This agreement was sanctioned by the Trade Agreement Act of December 23, 1918,[14] which regulated in detail the operation of collective bargaining.

II.

The Main Features of Collective Bargaining

The Act of December 23, 1918, endowed agreements

between labor and employer organizations with a quasi-legal status. The law accorded to these agreements priority over those of an individual labor contract and provided for administrative extension of collective agreements even to unorganized employees of entire industries. It established minimum wages for every type of occupation and imposed on the contracting parties the duty to preserve industrial peace for the duration of the trade agreement.

III.

Contracting Parties

The German Trade Agreements Act recognized the unions as sole bargaining agents for labor, whereas it gave to either individual employers or employer associations the right to contract. As an association of employers was not essential, an individual employer could enter into a trade agreement (shop agreement) while the workers had to be represented by an association.

Employer organizations qualified without difficulty as parties to collective agreements. The association had to be established primarily for economic ends. Representative bodies with quasi-public powers, such as Chambers of Commerce, were not qualified as bargaining agencies.[15]

An employer association that qualified as a bargaining agency had not only the right but also the duty to conclude collective agreements. It could not escape this obligation by a provision in its constitution which abrogated its capacity for collective bargaining. This capacity was held to be an inherent function of such an association and therefore did not depend on its willingness to assume it.[16] The arbitration authorities could consequently impose a collective agreement on an obstinate employer association.

As to labor it was well understood that a union which wanted to be recognized as a bargaining agent had to aim at the protection of the economic interests

of its members. Its objectives had to be primarily though not exclusively industrial. Educational and even religious endeavors could be included in its constitutional functions provided that its main objective consisted in the improvement of labor conditions.[17] Consequently, Christian Unions were never denied the right to conclude collective contracts.

The union had to be composed solely of employees. It could not admit employers to membership nor accept contributions from them, as this might compromise financial independence[18] — one of the fundamental requisites of a bargaining agency. Its capacity to conclude collective agreements depended upon whether it was a trade union proper in which employers had neither seat nor vote nor even a hidden influence. German farm organizations *(Landbünde)*[19] comprising both employers and employees therefore had no bargaining power. For the same reason associations that were formed at the instigation of employer associations, or supported by employers, did not qualify as bargaining agents. "Yellow Unions"[20] and "Company Unions" *(Werkvereine)*[21] were excluded from collective bargaining owing to their financial dependence on employers or employer organizations.

Bargaining powers were also denied to works councils. German law was clear on this point: it reserved collective bargaining to trade unions and assigned to the works councils the task of supervising the proper execution of trade agreements within their individual shops.[22]

IV.

Obligatory and Normative Provisions of Collective Agreements

In analyzing the rights and duties under a collective agreement it is advisable to separate its provisions, in accordance with current German theory on the subject, into those of a *normative* effect and those of an *obligatory* effect. Obligatory provisions merely create rights

between the contracting parties, i.e., the union and employer association or employer. The normative effect covers all those provisions which regulate the relation between the individual employee and his employer.

1. *Regulations concerning the relations between the parties to the trade agreement.*

(The obligatory part of collective agreements)

The primary obligation arising from this relation was the duty to preserve industrial peace *(Friedenspflicht)* for the duration of the agreement.[23] This obligation affected not only the executive committee but also the officers and agents of the contracting parties.[24] Any kind of industrial warfare, especially strikes and lockouts, was precluded.[25]

The question was whether the law held those organizations which were parties to trade agreements also responsible for the acts of their members. The answer was in the negative.[26] The parties were, in the absence of contrary provisions, responsible only for their personal actions.[27] But they had the duty to influence their members not to interfere with the faithful performance of the agreement. In principle the obligation to keep peace bound merely the contracting parties.[28]

Any act of industrial warfare undertaken in violation of this obligation was tantamount to a breach of contract with all its legal consequences. Liabilities by reason of such unlawful acts were twofold:

(a) The injured party could primarily insist upon special performance of the agreement.[29] In order to enforce performance and obtain security against future breaches of the agreement, the courts could be asked to grant an injunction prohibiting future breaches of contract under threat of punishment in case of violations of its terms.[30]

(b) A breach furthermore subjected the parties to liability for damages[31] sustained through industrial warfare. The amount of damages affected the unions most vitally, sometimes threatening their existence. The danger to the very existence of a union, caused by extensive

liability, could not be ignored. This consideration led the Committee on Labor Law to substitute a maximum fine in lieu of an unlimited compensation in its draft of the Trade Agreements Act.[32]

2. *Regulation of working conditions by collective agreements.*

(The normative part of collective agreements)

Whereas the obligatory part of the collective agreement created relations between the contracting parties, the normative part[33] established the rules which governed the substance of an individual labor contract. This vital part of the agreement contained provisions regarding wages, hours of work, holidays with pay, overtime —in short, all provisions forming part of an employment contract.

The most essential feature of the normative provisions of a trade agreement was their priority over the terms of individual employment contracts. The Collective Labor Decree stated that the working conditions of an individual agreement were ineffective wherever they deviated from the terms of the collective agreement,[34] unless the deviation constituted a modification in favor of the workers or was expressly authorized in the agreement.[35] In other words, the collective agreement laid down minimum labor conditions.

All employment contracts within the scope of a collective agreement had to be consistent with the minimum requirements of the trade agreement.[36] Individual labor contracts which violated this rule were not null and void but superseded by the collective agreement. Such ineffective provisions were automatically replaced by the terms of the collective agreement. Thus the provisions of the collective agreement were given the effect of statutory regulations.[37]

In the application of this principle of non-deviation *(Unabdingbarkeit)* of individual from collective terms, a waiver (renunciation) of rights under the collective agreements should have been considered incompatible with the purpose of the law to guarantee a minimum of

working conditions. In other words, a worker should have retained the right to wage arrears to which he was entitled under the collective agreement even if he had impliedly or expressly offered to relinquish this right.[38] This was, however, not generally recognized by German courts.[39] In the opinion of these courts waivers were considered invalid only with respect to future wages or when effected under economic pressure.

V.

The Personal, Occupational, Temporal and Territorial Scope of Collective Agreements

1. *The personal scope.* The much disputed right to apply collective agreements to individual parties (employers and employees) was finally established by the Trade Agreements Act. According to its provisions all members of associations which were parties to the agreement were primarily bound by it. Should a member (employer or employee) quit his association at a time subsequent to the conclusion of the agreement, his working conditions continued to be governed by the collective contract.[40]

Employers and workers who were not members of the contracting organizations were subject to the collective agreement:[41]

(a) if they concluded employment contracts with reference to the collective agreement

(b) if the collective agreement—and this was the most important case—was declared to be generally binding.

Extension to outsiders. The Federal Ministry of Labor was authorized to declare generally binding[42] all agreements of predominant importance in their particular field of occupation.

The contracting parties, as well as every association whose members might come within the collective agreement if extended, were entitled to apply to the Ministry of Labor for such an extension.[43] The extension was

rarely refused. This procedure introduced collective agreements into unorganized sectors of industry and commerce, and consequently strengthened the principle of collective bargaining in industrial relations. It assured organized workers that their standard of living would not be undermined by the unorganized who were willing to accept lower wages. It likewise protected employers against unfair competitive practices in labor relations.[44]

Often, however, organized workers considered it unfair for non-union workers to share in the benefits of an agreement which the union had fought for and won. In this connection the "closed shop" clause, if and when introduced in collective agreements, attained special prominence and practical importance. This clause prohibited employers from hiring workers who did not belong to unions which were parties to a collective agreement. The validity of this clause was highly contested on the ground that it sanctioned compulsory association, although section 159 of the Federal Constitution protected not only the right of organization but likewise the right to refrain from association. This disputed question was never definitely settled.[45]

Legal nature. The legal nature of the declaration of extension *(Allgemeinverbindlichkeitserklärung)* was a moot question. The prevailing view, confirmed by the highest law court,[46] regarded the declaration as a legislative act which conferred the force of law upon trade agreements *(Gesetzestheorie)*. Another view saw this declaration as nothing more than an administrative act[47] which increased the personal scope of a collective agreement without altering its contractual nature *(Vertragstheorie)*. The adoption of one or the other of these theories led to different results when a collective agreement had to be amended or terminated. To maintain legal security and in order not to interfere with existing extended agreements and the period of their duration, the Federal Ministry of Labor negated the importance of this dispute by establishing the following rule:

"The validity of the extended contract runs concurrently with that of the basic agreement and expires automatically with the expiration of the latter." [48]

2. *The occupational scope.* Collective bargaining started both on an industrial and craft basis. To a certain degree this led to overlapping and consequently to conflicts of jurisdiction.[49] With the rapid growth of collective bargaining such jurisdictional disputes increased. The fact that different unions concluded separate agreements covering the same labor group complicated matters even more.

With respect to this question the law established only one rule: where several agreements were declared generally binding but overlapped, the agreement covering the largest number of employment contracts in an enterprise prevailed.[50]

The Ministry of Labor attempted to clarify other doubtful points by defining in its declaration of extension the relation of the extended contract to similar agreements. Furthermore, unions joined to conclude agreements [51] in order to avoid complications.

3. *Temporal scope.* The parties were free to fix the entry into force of a collective agreement and its date of expiration.

As a rule the agreement became effective upon its conclusion. Nevertheless the parties could stipulate that regulations should come into force not as of the date on which they were signed or promulgated, but retroactively from the time when a labor dispute arose.[52]

The normative provisions of a collective agreement were not affected by its expiration as they automatically became part of individual employment contracts. Therefore they remained in force until a new agreement was reached.[53]

4. *Territorial scope.* Just as the legislation left the parties free to fix the duration of the agreement, its territorial scope would be equally determined by the will of the parties. Theoretically a collective agreement which did not indicate its territorial limits would have been

invalid. In practice, however, in the absence of an express provision, the territorial scope was presumed to cover the field of action of the associations and unions concerned.[54]

VI.

The Working of the Statute

The statute providing for collective agreements served as the most important stimulus to the collective organization of industrial relations, and in principle worked to the thorough satisfaction of all parties concerned in its application.

Whereas before the First World War two million employees were covered by collective agreements in spite of the apparent defects of the then prevailing legal system, in 1919, the first year following the enactment of the new law, the number of workers affected by trade agreements rose to 6,000,000. This development reached its climax in 1922 when 14,000,000 employees, i.e., 75% of all workers, were subject to collective bargaining contracts.

The following table shows in detail the development of collective agreements from 1912 to 1929:[55]

Year	*Number of coll. agreem'ts*	*Number of enterprises*	*Number of employees male*	*female*
December, 1912	10,739	159,930	1,574,285	———
December, 1913	10,885	143,088	1,398,597	———
December, 1919	11,009	272,251	5,986,475	———
December, 1920	11,624	434,504	9,561,323	1,665,115
December, 1921	11,488	697,476	12,882,874	2,729,788
December, 1922	10,768	890,337	14,261,106	3,161,268
January 1, 1924	8,790	812,671	13,135,384	3,039,205
January 1, 1925	7,099	785,945	11,904,159	2,959,489
January 1, 1926	7,533	788,755	11,140,521	2,878,882
January 1, 1927	7,490	807,300	10,970,120	2,726,628
January 1, 1928	8,178	912,006	12,267,440	3,006,796
January 1, 1929	8,925	997,977	12,276,060	2,920,586

According to these figures, the number of collective agreements had decreased rather than increased after the First World War. However, on January 1, 1929, the number of affected enterprises was seven times, and the number of employees almost nine times larger than

in 1913. The explanation is clear. The pre-war collective contracts were shop agreements of minor economic importance, whereas the post-war agreements covered large geographical areas and important industries. Of 12,200,000 employees working under 8,925 agreements in January, 1929, 10,700,000 were covered by contracts of major scope and only 1,500,000 by shop agreements.

The statistical records for the same period show 0.9% nation-wide agreements, 34.6% district agreements, 27.9% local agreements (covering cities or towns) and 36.6% shop agreements.

These figures do not reveal, however, the economic importance of the respective agreements. Considering this aspect of the problem the picture is quite different: district agreements, which widely predominated, embraced 75% of all wage earners, whereas nation-wide contracts covered 15%, local agreements 6%, and shop agreements 4%.

This survey which shows the increasing importance of collective bargaining in the social and economic structure requires an additional explanation. The practice of collective bargaining had developed a distinction between blanket collective agreements and wage scale contracts *(Mantel-und Lohntarif)*, a differentiation of great practical importance. Wage regulations were often separated from the general trade agreement. The blanket agreement, running for a long period and applying to a wide territorial area, contained the general working conditions, whereas the wage clauses, operating for a shorter period, were determined by local supplemental agreements. This separation made special consideration of local differentials and variations in the economic situation possible, which was the very reason for the conclusion of long term nation-wide or district agreements on the one hand, and short term wage regulations on the other.

To sum up: In the years 1920 to 1932 the number of workers and salaried employees whose working conditions were determined by collective bargaining fluctuated

between 10 and 13 million. These figures throw a light upon the impressive extent of collective bargaining and its decisive influence upon the social and economic structure. As wage scales under collective agreements were considered the customary and basic compensation, they influenced to a large degree unorganized sectors where they were often applied accordingly. The full extent of the influence of trade agreements on the economic life can therefore hardly be overestimated. Collective bargaining had become the dominating method of determining working conditions throughout Germany.

B.

France

I.

Origins and Development

(Collective Bargaining and Trade Union Movement)

The regulating of employment relations through collective agreement made less progress in France than in many other countries. There were three main reasons for the scarcity of collective agreements before 1936: the weakness of the trade unions, the hostility of the employers and the attitude of the Government.

1. Attitude of unions toward collective bargaining.

Strongly centralized organizations are the foundation of every collective bargaining structure. They facilitate the transition from the individual to a collective basis. The trade union movement in Germany was among the best organized in the world. The French trade unions, it is true, were equally centralized but they were for a long time weak, divided among themselves, and did not even agree on the necessity of collective bargaining. Both the multiplicity of unions and their comparative small membership impeded the progress of collective bargaining in France.

The great majority of unions, grouped regionally in inter-trade organizations and nationally in federations

for the various trades or industries, were affiliated with three separate confederations representing different tendencies: The French Confederation of Christian Workers, the General Confederation of Labor and the General Confederation of United Labor.

The *French Confederation of Christian Workers* had always been in favor of collective agreements but its membership was insignificant. According to the report of the French National Economic Council [56] in 1934 its own statistics claimed only about 150,000 members.

The *General Confederation of Labor* which up to the First World War maintained a cautious but rather hostile attitude toward collective agreements, changed its position during and especially after the war and finally strove to make collective bargaining more and more general.

Contrary to the American conception whereby trade unions seek improvement of working conditions within the framework of the existing social order, French trade unionism before the First World War was class-conscious and revolutionary. Inspired by syndicalistic ideas they refused to deal with employers, as such dealing would compromise their revolutionary aims. In 1910 the trade union convention of Toulouse expressly rejected the use of collective bargaining.[57] To unions imbued with militant and revolutionary syndicalism any dealings with employers appeared not only unnecessary but even dangerous.

This belligerent attitude, however, changed during the war with the ideologic re-orientation of French trade unionism. In France, as elsewhere, the practice of collective bargaining had been stimulated by the war. The Government which favored this development enacted two decrees that paved the way: The law of 1915 provided for a minimum wage for women home workers, to be determined by a mixed commission composed of an equal number of workers and employers. The findings of this commission had the effect of a binding trade agreement. In 1917 another law was enacted granting an

extra half-holiday to women workers under conditions to be determined by mixed commissions. The significance of these measures, in spite of their limited scope, was the adoption of the new principle that employers and employees meet on an equal basis in order to regulate working conditions.

After the war the General Confederation of Labor favored collective agreements as vital to labor and, in defending its own faith in collective bargaining, complained that it was the employers who were opposed to it.[58] The General Confederation of Labor, as a whole, had adopted trade agreements as an instrument to secure better working conditions.

The *General Confederation of United Labor*, a minority group which withdrew from the main body in 1920, maintained its opposition to collective bargaining. However, even in this union which was more or less connected with the Communist party, grew the feeling that dealings with employers though objectionable in principle were unavoidable in practice. They drew a distinction between their conception of trade agreements and that of the General Confederation of Labor. The latter, they said, officially, held that trade agreements were an end in themselves and therefore prejudicial to class struggle, while for the General Confederation of United Labor trade agreements merely meant a temporary truce in the struggle between employers and labor. They remained opposed to the establishment of joint committees for the application of collective agreements which they denounced as "class collaboration."[59] These differences were settled only in 1935 when both unions were re-united.

All these controversies however reflected the opinion of only a small proportion of workers, as only approximately 10%[60] of French labor was organized in trade unions. No exact information was available in the postwar period as to trade union membership. The General Confederation of Labor had about 900,000 members;

the membership of the General Confederation of United Labor was estimated at 200,000.[61]

2. Attitude of employers toward collective bargaining.

Owing to the fundamental individualism of French employers, their associations were always inimical to collective bargaining. Because of this individualistic spirit the structure of the employer associations was quite different from that of the unions. It was neither monolithic nor highly centralized.

There were two types of employer organizations: trade associations and federations of trade associations either for a specified industry or branch of industry or for several industries. The General Federation of French Production represented the interests of French industry and commerce as a whole on a national scale. As a general rule, employers associations were not empowered to conclude collective agreements. Some by-laws expressly prohibited any action in this field. Associations would have exceeded their jurisdictional limits in concluding labor agreements without "special authorization" by a general membership meeting which did not even bind dissenting members. According to the report of the French National Economic Council in 1934, only one single federation, namely the National Federation of Building, had the power to enforce collective agreements concluded by trade associations.

As a rule employers associations had no organizing functions. Their main purpose was to study economic, social and fiscal questions which affected all the members of the group and to protect their interests in their dealings with public authorities. The associations had no authority over their members. They did not have to organize but to represent them. This spirit which was most unfavorably disposed to collective bargaining was not relaxed until the introduction of the Trade Agreements Act in June, 1936.

II.

Legal Status of Collective Agreements Prior to 1936

The legal status which reflects the respective attitude of labor and management, shows three distinct phases:

1. The passive attitude of the State toward collective agreements prior to the First World War.

2. Encouragement by the State in the post-war period, although legislative measures remained ineffective.

3. Enforcement of collective agreements under the statute of 1936.

Prior to the war attempts had been made to supply an adequate legal foundation for collective bargaining practice by means of judicial decisions. This attempt failed. One early decision had held that trade agreements were illegal because they violated the principle of "freedom of work." [62] Later decisions, it is true, abandoned this untenable point of view. But the practice of the law courts which remained entirely governed by the individual and contractual conception of collective agreements, deprived them of their substance. In the first place, outsiders were not bound by a contract unless they expressly ratified it. Certain labor courts *(Conseil de Prud'hommes)* attempted to circumvent this doctrine by treating collective agreements as trade customs. The Supreme Court *(Cour de Cassation)*, however, upheld the limited interpretation in reliance upon the French Civil Code under which agreements are binding only upon the contracting parties.

Consequently nobody could prevent workers and employers from departing from the terms of the collective agreement by means of individual agreements with less favorable terms and conditions. Another important consequence was that trade unions could not sue for breach of contract. These decisions were so manifestly contrary to the nature of collective agreements and to their fundamental requirements that their economic purpose was completely vitiated.

As a result of the impetus given to collective bargaining in the war and post-war period, the first French law regulating collective agreements was passed on March 25, 1919, and incorporated in the first book of the French Labor Code. The law laid down the formalities for the conclusion of collective agreements and defined their scope and effects. In contrast to the German law at that time, the French statute failed to accord a preferential treatment to collective agreements so that it did not essentially change the unsatisfactory situation which had resulted from previous court decisions. One of the most important provisions calling for the binding effect of collective agreements on third parties in the same trade and region, was rejected because of the stubborn resistance of the Senate.

As a result of the strictly contractual nature of collective agreements, it was possible for enterprises not affiliated with employer associations to evade obligations accepted by even the most representative organizations in the trade. It was therefore not unnatural for employers to hesitate in agreeing to conditions of employment which might place them at a disadvantage as compared with their competitors.

Its emphasis upon the contractual nature of collective agreements was not the only shortcoming of the statute. Under its rules it was even possible for groups or individuals to withdraw from a collective agreement to which they had adhered. The law permitted individuals to be released from an agreement by resigning within a period of eight days from their associations, upon notice to the appropriate tribunal. In this way collective agreements were deprived of their substance. The National Economic Council summed up the deficiency of this system as follows: "Both parties were virtually free to evade the consequences of the agreement they had concluded. Further, such agreements had no real force as regards third parties. Finally and above all, no adequate attempt was made to promote the conclusion of such agreements."[63]

Practical results of collective bargaining prior to 1936. The deficiency of the legal system was reflected in the unsatisfactory results of collective bargaining in practice.

Up to 1914 collective agreements were of slight importance except in those few fields such as mining, printing, and allied industries where workers were strongly organized.

During the war the practice of collective bargaining, encouraged and supervised by State authorities, spread widely under the direction of Albert Thomas, then Minister of Munitions and later the first President of the International Labor Office.

In the post-war period there was a sharp contrast between the development of collective bargaining in France and that in other industrial countries. Contrary to the growth of collective bargaining elsewhere, collective agreements lost ground in France year after year. It is true that a great many agreements were concluded during the years immediately following the war, but due to constant pressure of employer groups trade settlements were not renewed and gradually disappeared.

Prior to 1936 only a small percentage (7.5%) of wage earners, confined to the baking, coal mining, printing, building and leather industries, were covered by collective agreements. In other branches of industry, commerce and agriculture, collective agreements were almost non-existent. The great majority of those in force were local agreements covering one town or even one enterprise. Few were regional or departmental. Only in the printing, mining and building industries were the agreements usually regional. National agreements were practically unknown; the few that were made merely laid down principles for the conclusion of local agreements.

In conclusion: trade settlements were found in but a few branches of various industries and their significance was limited to a restricted area. But even those settle-

ments which did exist, did not regulate all working conditions but dealt only with some particular aspects of worker-management relations. Complete agreements regulating the main working conditions (wages, hours, rest periods, notice of dismissal, holidays with pay, hiring, etc.) were to be found only in the printing industry. As a rule the collective agreements were partial settlements dealing almost exclusively with wages.

The National Economic Council,[64] stating that in France the conclusion of collective agreements had been beset with difficulties, thought that this state of affairs involved grave risks, and suggested the conclusion of agreements in line with the special requirements of each branch of industrial and commercial activity. This plan, however, could not be realized before June, 1936, owing to the employers' opposition to collective bargaining.

Only when powers shifted to labor in May, 1936, did employers retract and agree to cooperate with trade unions in the field of industrial relations. Legislative sanction was preceded by an agreement generally known as the *"Accord Matignon"* which was signed on June 7, 1936, in the presence of the Prime Minister by delegations of the Confederation of Labor and the General Confederation of French Employers—the most representative unions and employer associations. The agreement called for the immediate preparation of collective labor contracts and specified the main clauses to be contained in these contracts.

It is a most interesting coincidence that in France as well as in Germany the legislative measures were preceded by famous agreements between the most representative employer and labor organizations which recognized trade unions as the legitimate representatives of labor. In Germany, the agreement of the Central Joint Labor Council of November 15, 1918; in France, the Matignon Agreement. These settlements were hailed in both countries by trade union leaders as the *"Magna Chartas"* of organized labor.

III.

Collective Agreements Under the Modern Statute of Labor

In surveying social reforms in France under the Popular Front Government, Fernand Maurette[65] appraised the importance of the Trade Agreements Act of June 24, 1936, in these words: "This law introduced for the *first* time the system of collective bargaining as a *customary* form of industrial relations in France."

The new statute put an end to all defects and shortcomings of the preceding period. The substance of the new Act was that it barred any possible evasion of the consequences of collective bargaining by the contracting parties. Moreover, trade agreements could be extended by administrative order to all employers and employees within the same industry, whether or not they had participated in its original conclusion.

1. *The main features of the new law.* By giving priority to collective agreements over individual labor contracts, by rendering governmental assistance in the conclusion of agreements and by establishing the legal means of extending agreements to third parties, French labor legislation in 1936 adopted the principles of the German Trade Agreements Act of November, 1918.[66]

2. *Procedure for concluding agreements.* The new provisions permitted the Minister of Labor to intervene:

(a) by facilitating the conclusion of collective agreements

(b) by declaring collective agreements binding upon management and labor in an entire industry or district.

The assistance of public authorities in the conclusion of trade settlements was secured by the following provision:

"At the request of any organization of employers or employees, the Minister of Labor, or his representative, shall take steps to have a joint committee convene for the purpose of regulating the relations between labor

and management in any particular branch of industry or commerce for a given district or for the entire territory of France."[67]

A joint committee had to be formed even if only one organization desired a collective agreement. While recourse to the joint committee was compulsory, the decision taken by the committee was not binding on the parties unless they voluntarily accepted it. Should the committee not succeed in negotiating an agreement, the Minister of Labor had to intervene in order to assist in the settlement of the dispute. Should his intervention fail, either of the parties could request arbitration.[68]

The joint committee was formed from delegates of the most representative industrial organizations of employers and employees of the respective district.

The question as to which organizations were to be considered as "industrial organizations" and which among them were the "most representative" gave rise to discussions soon after the law was put into practice.

In order to settle these controversies a ruling of the Ministerial Council, dated October 26, 1936, stated that in using the general term "industrial organization" without special reference to prevailing legal requirements for the organization of trade unions, the legislator intended "to refer to all legally constituted occupational organizations established for the purpose of a trade union, that is to say, for the study and defense of economic, industrial and commercial interests."[69]

The meaning of the term "most representative organization"[70] was defined as follows:

"When considering whether or not an occupational organization is most representative, the age of the organization and the part it had played in the past in negotiating with other occupational organizations or with authorities must be borne in mind. Moreover, attention should be paid to the strength of the bond between the organization and its members; this relationship should have a certain degree of permanence and should not appear to be merely accidental or temporary.

The amount of the contribution and the regularity with which same is paid, are criteria which indicate the value attached by the workers to the occupational organization they have set up."

When several organizations were considered "most representative," a delegate of each was given a seat in the joint committee.

3. *Extension of collective agreements to third parties by administrative measure.* A collective agreement could be extended by order of the Minister of Labor to all employers and wage earners in a particular branch of industry or commerce. This was the second and most important field of governmental intervention in the realm of collective bargaining.

A collective agreement which became binding upon management and labor of an entire industry had the effect of a minimum-wage law. Thus employers and employees who had taken no part in the discussion of a trade agreement and were often entirely ignorant of its existence, were brought within its scope. In order that such third parties be informed of the contemplated measures and to give them an opportunity to present their views, the Minister of Labor, before issuing an order of extension had to publish in the official Gazette notices of proposed extensions, stating in particular the place where the agreement was filed and inviting all parties in interest to submit to him their comments and opinions within a time limit of not less than two weeks.[71] In addition, the Minister had to consult the proper industrial division of the National Economic Council.

An agreement with an *individual employer* was not extendable regardless of the importance of his enterprise in its district.[72] It is not true, however, that only those collective agreements concluded in the presence of a representative of the Minister of Labor could be declared generally binding.[73] Agreements that were settled without the assistance of the public authorities could likewise be extended. As the authorities merely

had to assist in the conclusion of trade settlements, there was no reason to refuse the extension of agreements that were negotiated directly between the parties.[74]

A complete copy of the agreement had to be posted in all work-shops. Employers who failed to observe this regulation were subject to criminal proceedings (fine or imprisonment in the case of a second offense).

As the agreement had the force of law between the parties, they could submit to any kind of restriction upon their freedom of action and also provide for contractual penalties. The question was whether such provisions could be extended by ministerial order to unorganized persons who were made subject to the general scope of the agreement. In many French collective agreements there was a clause prohibiting employees from accepting gainful work in their craft outside their regular employment. Some collective agreements prohibited employers from engaging pensioners or persons who had retired from work. Others made it compulsory for the employer to hire labor through trade union employment agencies. It was perfectly legal for the contracting parties to agree to such clauses; but were they extendable?

French theory did not make the distinction between obligatory and normative provisions as did the German system. Under German law provisions concerning rights and obligations of contracting parties were not affected by an extension. Only provisions governing conditions of employment could be extended beyond their contractual field to third parties.

But in practice a similar result was achieved in France by adopting the principle that only those provisions which were made obligatory for all collective agreements[75] could be declared generally binding.

The order of extension ceased to be operative as soon as the parties to the agreement decided jointly to abandon, revise or modify it.[76]

The Minister of Labor could likewise revoke the order[77] whenever it appeared that the collective agree-

ment was no longer in accord with the economic conditions in its branch of industry or commerce. Thus the French system had averted jurisdictional conflicts which caused so many difficulties under the German system.

4. *The contents of collective agreements.* French law required that the following points be covered in a collective agreement: freedom of association, minimum wage rates, notices of dismissal, apprenticeship, procedure for the settlement of disputes arising out of the agreement and procedure for its modification.

Minimum Wages: Minimum wage rates formed the essential part of every collective settlement which had to contain a detailed schedule of minimum rates for each occupational group. French law tolerated no breach of the wage structure. Contrary to Germany where the courts partially impaired the effectiveness of minimum wage rates by recognition of waivers,[78] France permitted no exceptions.

The enforcement of minimum wages was guaranteed in a threefold way: (a) by individual action, (b) by supervision through factory inspectors, (c) by union action.

(a) *Individual action:* The individual worker was entitled to damages in case of underpayment. In principle, the amount of damages corresponded to the loss suffered through a lower wage payment.

(b) *Supervision and penalties:* By Decree of May 2, 1938,[79] factory inspectors who were entrusted with the enforcement of social legislation, were also charged with supervising the performance of collective agreements. Fines were imposed on employers who failed to observe minimum wage scales.

(c) *Trade union action:* A Decree of November 12, 1938,[80] conferred on trade unions the right to bring an action, without special authorization, on behalf of any one of their members who had sustained a loss as a result of the employer's disregard of minimum wage provisions.

These three measures effectively secured the observance of trade agreements.

There was a marked tendency in France to adopt the principle of equal pay for equal work. Young workers were usually treated the same as adults and there was no difference between the wage scale of workers with dependents and those without. Thus employers were not tempted to dismiss older workers or heads of families in order to save wage differentials, especially in periods of depression.

However, the social factor was not ignored; an act of March 11, 1932, placed a joint obligation for family allowances on all employers. Under this law employees with children under the age of fourteen were entitled to family allowances. Every person employing industrial, commercial or farm labor had to adhere either to an equalization fund or to an institution formed with the approval of the Minister of Labor for the purpose of meeting the charges involved in the payments of the family allowances, the rates of which were fixed by special decree. These allowances were added to wages paid under collective agreements.

This social security system strengthened the status of French workers with dependents. The employer's payroll was the same, regardless whether their workers were young or old, married or single, or with or without children to support. In Germany, the employee's civil status was often specially considered in the wage scale of collective agreements, a practice which, by tempting the employer to dismiss older and married workers, frustrated its very purpose.

Freedom of Association. With regard to freedom of association most of the agreements simply restated the text of the "Matignon Agreement" which recognized the right of labor to organize free from restraint or pressure. This paragraph reads as follows: "The employers undertake not to discriminate because of union affiliation, in hiring men, in the conduct and distribution of work; in matters of discipline, or in lay-offs."

Notice of Dismissal. The question of notices had to be regulated by collective agreements because of the lack of statutory provisions. The law left it to collective agreements to fix the period of notice under which the worker was to be dismissed. A provision to this effect was mandatory in every trade agreement.

Collective agreements generally confirmed and defined pre-existing customs in the various industries. The period of notice was generally one week for wage earners and one month for salaried employees. In several agreements, however, contrary to previous French custom, a new system was adopted according to which notice was given in proportion to the length of service of the individual employee.

Many agreements not only fixed the period of notice but also provided for special compensation for dismissed workers in proportion to their length of service.

Apprenticeship. Terms of apprenticeship were covered by trade agreements although this matter had been regulated in the Labor Code. Most of the agreements merely referred to the statute so that this question is of no peculiar interest.

IV.

Results

It is difficult to appraise fully the functioning of the new statute for two reasons: first, its short duration and second, the lack of comprehensive statistical data. The French official records indicate only the number of agreements in the various branches of industry and commerce and their geographical application. However, they do not reveal the number of enterprises and employees affected, and consequently throw no light on the economic importance of the agreements.

In any case, there can be no doubt as to the rapid growth of collective bargaining subsequent to the enactment of the new law. In the three years of its func-

tioning for which statistical data are available, more than 6,000 collective agreements were negotiated.

Three figures are significant from a statistical point of view: Out of 6,114 trade agreements deposited at the Ministry of Labor only 1,197 agreements were made the subject of an application seeking their extension to unorganized sections, and in only 329 cases was such extension granted.[81] In other words, in only 20% of all cases were applications filed and in only 5% was the extension granted.

Contrary to Republican Germany where the system of extension was applied to a large extent, the French authorities used this method cautiously and accorded extension only in few and homogeneous industries, such as textile, metallurgical and chemical industries, and transportation and building trades. This difference in methods need not be ascribed to a basic divergence of opinion, but rather to the French custom of introducing such reforms gradually according to experience.

FOOTNOTES TO CHAPTER III.

[1] Adolf Weber *Der Kampf zwischen Kapital und Arbeit*, fifth edition, Tübingen, 1930. Zwing *Geschichte der deutschen freien Gewerkschaften*, Jena, 1922. Nestriepke *Das Koalitionsrecht in Deutschland*, Berlin, 1914. Nestriepke *Gewerkschaftsbewegung*, Stuttgart, 1921. Cassau *Die Gewerkschaftsbewegung*, second edition, 1929. Reindl *Die deutsche Gewerkschaftsbewegung*, Altenburg, 1922.

[2] Section 152.

[3] Section 153.

[4] Section 153.

[5] Landmann *Kommentar zur Gewerbeordnung*, footnote to Section 153.

[6] Mueller "Die Gewerkschaften und das Sozialistengesetz" in *Die Arbeit*, 1928, p. 669 and seq.

[7] Quoted by Reindl *Die deutsche Gewerkschaftsbewegung*, 1922, p. 38.

[8] Statistical details are to be found in the survey of the International Labor Office "*Studies and Reports*" *Series A Industrial Relations*, p. 13 and seq.

[9] Richard Seidel *The Trade Union Movement of Germany*, International Trade Union Library, Amsterdam, 1928, p. 74.

[10] Reindl *Die deutsche Gewerkschaftsbewegung*, p. 241.

[11] Law of June 20, 1916, new Section 17a.

[12] Law of Dec. 5, 1916 (Reichsgesetzblatt, 1916, p. 1333).

[13] Law of May 22, 1918, Reichsgesetzblatt, 1918, p. 423.

[14] Reichsgesetzblatt, 1918, p. 1456.

[15] cf. Hueck-Nipperdey "Tarifsvertragsrecht" in *Lehrbuch des Arbeitsrechts*, 3-5 edition, 1932, vol. 2, p. 158.

[16] Federal Labor Court in *Bensheimer Sammlung*, Vol. 5, p. 537, 543; Sinzheimer *Grundzüge des Arbeitsrechts*, 2nd edition, 1927, p. 254 et seq. Further references to this highly disputed question are to be found in Hueck-Nipperdey *Gewollte Tarifunfähigkeit*, vol. 2, p. 172.

[17] Nipperdey ibid "Aufgabenkreis der Berufsvereine," p. 518.

[18] Federal Labor Court in *Bensheimer Sammlung*, vol. 4, p. 231 *et seq.* vol. 5, p. 543.

[19] contrary to judgments of the Federal Labor Court in *Bensheimer Sammlung*, vol. 4, p. 294 and vol. 9, p. 487, which recognized these organizations as bargaining agencies.

[20] Heiss "Die gelbe Arbeiterbewegung" in *Jahrbuch für Gesetzgebung, Verwaltung und Wirtschaft*, 1911, p. 337. Vorwerk *Die wirtschaftsfriedliche Arbeitnehmerbewegung Deutschlands*, 1928. Schweizer "Sind Werkvereine wirtschaftliche Vereinigungen von Arbeitnehmern?" *Afa-Bund*, 1928, p. 36, et seq.

[21] cf. Mueller *Die Werkgemeinschaft*, 1928, p. 50 and Fraenkel in *Arbeitsrechtspraxis*, 1929, p. 79, et seq.

[22] Circular of the Federal Minister of Labor of September 22, 1920, (*Reichsarbeitsblatt*, 1920, I, p. 52).

[23] Bringmann *Friedenspflicht und Tarifbruch*, 1929.

[24] Judgment of the Federal Labor Court in *Bensheimer Sammlung*, vol. 8, p. 550.

[25] cf. Federal Labor Court in *Bensheimer Sammlung*, vol. 2, p. 194: The implied obligation to preserve industrial peace which arose out of a collective agreement extended no further than the scope covered by the agreement (cf. Fuchs "Collective Labor Agreements in German Law" in *St. Louis Law Review*, vol. 15, p. 1, et seq.). A strike with the purpose of receiving holidays with pay or a sympathetic strike was not illegal if the collective agreement regulated only other conditions (cf. Lehmann "Collective Bargaining in the German Republic" in *Wisconsin Law Review*, vol. 10, p. 324, et seq., with further references).

[26] RGZ (Decisions of the Federal Supreme Court), vol. 111, p. 107.

[27] cf. Neumann in *Arbeitsrechtspraxis*, 1929, p. 51.

[28] cf. ibid Hueck-Nipperdey, vol. 2, p. 111: "Die Friedenspflicht trifft nur die Tarifparteien, denn die Tarifparteien schliessen den Tarifvertrag im eigenen Namen ab. Aus dem Tarifvertrag folgt niemals eine Friedenspflicht der Mitglieder der vertragschliessenden Verbände gegenüber der ihrem Verband gegenüberstehenden Tarifpartei. Wohl aber werden die Mitglieder *ihrem* Verband gegenüber durch den Tarifvertrag friedensverpflichtet." p. 221: "Diese Tarifunterworfenheit gilt nicht für diejenigen, die aus den Verbänden ausgeschieden sind. Sie gilt auch nicht für die Aussenseiter, die durch Allgemeinverbindlichkeitserklärung tarifbeteiligt werden."

[29] cf. Potthoff in *Arbeitsrecht*, 1927, p. 374.

[30] cf. Lion-Levy in *Neue Zeitschrift für Arbeitsrecht*, 1927, p. 745; Meister in *Neue Zeitschrift für Arbeitsrecht*, 1928, p. 431.

[31] Sections 276, 286 German Civil Code.

[32] cf. Nipperdey *Gutachten zum 34. Deutschen Juristentag*, vol. 1, p. 420, et seq., with further references to this question.

[33] cf. Jacobi *Grundlehren des Arbeitsrechts*, 1927, p. 181, et seq.; Bormann "Die Abgrenzung der normativen und obligatorischen Bestimmungen im Tarifvertrag" in Kaskel *Hauptfragen des Tarifrechts*, 1927, p. 59, et seq.

[34] Collective Agreements Act, Section 1.

[35] This clause took into consideration the needs of particular enterprises to which the collective agreement applied; it also covered cases of limited working capacity. cf. Kronenberg *Die Ausnahmen von der Unabdingbarkeit*, 1929.

[36] Judgment of the Federal Labor Court in *Bensheimer Sammlung*, vol. 8, p. 120.

[37] Through modification of an existing collective agreement or the conclusion of a new one, the new norms automatically became part of the individual contracts of employment.

[38] "Verzicht und Verwirkung" was one of the most if not the most discussed controversy in this matter. cf. Neumann *Tarifrecht auf der Grundlage der Rechtsprechung des Reichsarbeitsgerichts*, 1931, p. 108, et seq.; Woelbling in *Gewerbe-und Kaufmannsgericht*, vol. 31, p. 27, et seq.; Reich *Labor Relations in Republican Germany*, p. 86, et seq., gives a clear and unbiased detailed resumé of this controversy.

[39] Reichsgericht in *Juristische Wochenschrift*, 1927, p. 241; Federal Labor Court in *Bensheimer Sammlung*, vol. 2, p. 1, vol. 4, p. 375, vol. 5, p. 456, vol. 6, p. 75, vol. 8, p. 468, vol. 9, p. 497, vol. 10, p. 63, vol. 11, p. 595, vol. 12, p. 300.

[40] Federal Labor Court in *Bensheimer Sammlung*, vol. 2, p. 19, vol. 12, p. 159.

[41] Hueck-Nipperdey ibid "Die Tarifbeteiligung" in vol. 2, p. 210, et seq.; Hawelka in *Neue Zeitschrift für Arbeitsrecht*, 1930, p. 151, et seq.

[42] Well *Die Allgemeinverbindlichkeitserklärung*, 1926; Aschaffenburg "Der Streit um die Wirkung der Allgemeinverbindlichkeitserklärung von Tarifverträgen. Ein Vorschlag zu seiner praktischen Lösung." In *Neue Zeitschrift für Arbeitsrecht*, 1927, p. 661, et seq.

[43] Collective Agreements Act, Section 3, subsection 1.

[44] RGZ, vol. 117, p. 16, et seq., according to which the employer was guilty of unfair competition if he did not comply with the terms fixed by a generally binding agreement.

[45] The Reichsgericht and the Federal Labor Court left this controversy expressly and intentionally unanswered: *RGZ*, vol. 103, p. 329, et seq., vol. 111, p. 201, et seq. Federal Labor Court in *Bensheimer Sammlung*, vol. 6, p. 427, vol. 9, p. 55; cf. Potthoff *Einwirkungen der Reichsverfassung auf das Arbeitsrecht*, p. 14, et seq., and Sinzheimer in *Die Arbeit*, 1926, p. 744.

[46] *RGZ*, vol. 117, p. 19. cf Jacobi *Grundlehren des Arbeitsrechts*, p. 106, et seq.; Sitzler in *Gewerbe-und Kaufmannsgericht*, vol. 25, p. 72.

[47] cf. Molitor in *Schlichtungswesen*, 1931, p. 258, et seq with further references.

[48] *Reichsarbeitsblatt*, 1930, I, p. 3.

[49] cf. Becker *Tarifnormenkollision*, 1924; Ehrenwerth *Die mehrfache Tarifgebundenheit eines Arbeitsverhältnisses*, 1931.

[50] Decree of December 23, 1918, Section 2, subsection 2.

[51] as f.e. the Christian and the Free Unions in the metal industry.

[52] Voss "Rückwirkung von Tarifverträgen," 1930.

[53] This "Nachwirkungstheorie," however, was highly controversal. cf. Hueck *Neue Zeitschrift für Arbeitsrecht*, 1926, p. 151, et seq.

[54] Federal Labor Court in *Bensheimer Sammlung*, vol. 9, p. 122.

[55] Statistical data: *Reichsarbeitsblatt*, Sonderheft 57 "Die Tarifverträge für Angestellte im Deutschen Reich"; Sonderheft 58 "Die Tarifverträge für Arbeiter im Deutschen Reich"; cf. T. Carl Schmitt "German Business Cycles 1924-1933," Publication of the National Bureau of Economic Research," New York, 1934, No. 25, p. 104.

[56] Conseil National Economique "Les Conventions Collectives de Travail" Rapport présenté par Pierre Laroque, auditeur au Conseil d'Etat et adopté par le Conseil National Economique dans la session du 30 novembre 1934, Paris, Imprimerie Nationale 1934.

[57] Humbert *Le Mouvement Syndical*. Fuchs "French Law of Collective Agreements" in *Yale Law Review* 41, p. 1006.

[58] Léon Jouhaux *Le Syndicalism et la CGT*, p. 153, et seq.

[59] David I. Saposs *The Labor Movement in Post-War France*, 1931, p. 199.

[60] This figure includes civil servants.

[61] Report of the French National Economic Council, 1934.

[62] François Rafale *Les Conventions Collectives en Droit Français*, Paris, 1913, p. 12.

[63] Rapport du Conseil National Economique, Paris, 1934.

[64] Official Advisory Board composed of representatives of the economic life of the nation cf. ibid Rapport 1934.

[65] *International Labor Review*, July, 1937, "A Year of Experience in France."

[66] During the debates in the Chamber references were often made to the German system.

[67] *Journal Officiel*, 1936, p. 6698, 6699.

[68] Introduced by the act of December 31, 1936, *Journal Officiel*, January, 1937, p. 127.

[69] Circular letter of the Minister of Labor of August 17, 1936, *Journal Officiel*, 1936, p. 9392.

[70] The term is taken from the Constitution of the International Labor Organization where it is used in connection with the appointment of the delegates of employers and workers to the conference of the organization.

[71] Labor Code I, Section 31, ve.

[72] Superior Court of Arbitration, No. 724, *Le Temps*, January 11, 1939.

[73] Pouillot "Collective Labor Agreements in France" in *International Labor Review*, 1938, p. 1, et seq.

[74] Chapsal "Les Conventions Collectives et leur Extension" in *Revue Politique et Parlementaire*, 1938, p. 442, et seq.

[75] Section 31 vc First Book of the Labor Code.

[76] Section 31 vf (division IVbis of chapter IVbis of Part II of the First Book of the Labor Code).

[77] Contrary to the German system.

[78] cf. supra, p. 48.

[79] *Journal Officiel*, 1938, p. 4951.

[80] *Journal Official*, 1938, p. 12869.

[81] *Bulletin du Ministère du Travail*, 1938, p. 322 and 433, 1939, p. 341.

Chapter IV

Chapter IV

MEDIATION AND ARBITRATION

Introduction

During the decade from 1890 to 1900 England and Australia took steps to relieve the friction between employers and employees, the former through voluntary agencies and the latter through compulsion. Their laws were rapidly copied and applied to social legislation in other countries so that from almost a half century of experience certain definite principles of mediation and arbitration have evolved.

A.

Germany

I.

Historical Development

Prior to the First World War there was a complete lack of adequate machinery for the prevention or settlement of collective labor disputes. It is true that the labor courts had a limited jurisdiction in mediation matters, and similar functions were retained by some of the wage boards which had been set up by collective agreements. Yet neither of these institutions produced any activity worthy of mention.

During the war, however, sporadic attempts were made to set up a mediation and arbitration machinery. These attempts finally culminated in the Auxiliary Service Act of December 5, 1916,[1] which provided for mediation boards *(Schlichtungsausschüsse)* entrusted with the settlement of labor disputes. Thus the first institutions for the primary purpose of industrial arbi-

tration were created. Although the power of the boards was still limited, they had the right to render awards. Nevertheless, these awards were not enforceable though the war atmosphere and the fact that these boards were primarily established in the interest of war production lent these awards a strong moral support.[2] Furthermore, their power over employers was due to the right of the military authorities to permit a worker to change his place of employment[3] whenever an employer proved reluctant in observing the wage scales prescribed by the arbitration boards. The decisions thus involving a substantial element of compulsion had therefore a "quasi-obligatory" character.

The boards were composed of an equal number of employers and employees presided over by an impartial chairman. As these boards were constituted to promote the war effort, they were part of the military organization of the country and it was therefore the War Office which appointed their chairman, generally an army officer.

The Auxiliary Service Act was repealed immediately after the Revolution of November, 1918. Its provisions dealing with mediation and arbitration, however, were retained[4] until the Republican Government organized an arbitration system on a complete new basis by Decree of December 23, 1918.[5] This act was considered a temporary measure. In 1920 the Ministry of Labor prepared a bill on mediation and arbitration which was frequently amended and finally submitted to the Reichstag in March, 1922. Although the bill was discussed at length, it never came to a vote. As the emergency due to the inflation did not permit of any delay in re-organizing the mediation machinery, the Government promulgated on October 30, 1923,[6] a Mediation Order which formed the legal basis for the adjustment of labor disputes. It remained in force until the collapse of the Weimar Republic.

II.

Principles and Nature of Mediation and Arbitration

According to generally established terminology labor disputes are divided into collective and individual disputes, disputes on rights and disputes on interests.[7] These distinctions mark the fundamental character of the German mediation system. The object as defined in the Mediation Decree was "assistance in the conclusion of collective agreements."[8] The mediation authorities had to help the parties in settling disputes. It follows from this definition that only collective disputes could be settled by the mediation authorities.

Individual disputes—disputes between an employer and his individual employee—were consequently excluded from the mediation machinery. Such controversies came under the jurisdiction of the labor courts.[9] But not all *collective* disputes could be dealt with by the mediation authorities. The scope of the procedure was limited to disputes on interests. Controversies concerning the existence, validity, interpretation or application of a collective agreement were of a fundamentally different nature: they were judiciable, and therefore settled on judiciable grounds. The mediation boards created the law between the parties but did not apply it. Disputes arising out of the interpretation of existing agreements, or the alteration of an agreement, were beyond the scope of the mediation procedure.[10] They fell within the jurisdiction of the labor courts. A settlement of "disputes on interests" led to the creation of rights (collective agreements). Once a right was created, its interpretation or alteration followed the general rules of contracts. Mediation is not adjudication *(Schlichten ist nicht Richten)*.[11] Unless all parties in interest consented, the mediation machinery was not available for the modification of a trade agreement since such practice would "entail a breach in the principle of the sanctity of contracts on which the value of

collective agreements in common with that of the whole of contract law depends." [12]

Consequently, the result of the process of mediation and arbitration was not a "verdict" but an "award." This is reflected in the original terminology *"Schlichtung."* This special term, difficult to translate, was exclusively used for the settlement of labor disputes. It embraced the idea of both: mediation and arbitration.

In short, individual and collective disputes of a legal nature arising out of the application and interpretation of collective agreements, was not subject to the mediation machinery. Only disputes concerning the collective regulation of working conditions could be brought before the mediation authorities.

III.

Arbitration Authorities

The German system embraced three different types of mediation agencies: the Mediation Boards *(Schlichtungsausschüsse)*, the State Mediators *(Schlichter)*, and the Ministry of Labor.

The Mediation Boards were composed of an equal number of employer and employee representatives presided over by an impartial chairman.[13] The chairman had to be "independent," i.e., he could not belong to, or be connected with, any employer or employee organization. He was appointed by the Government for an indefinite period with the status of a civil servant. "The nature of mediation and arbitration made an appointment for an indefinite period advisable. The success of the proceedings depended so completely on the confidence of the parties and the wage fixing functions of an independent chairman were so important to the Government that the institution of non-removable officials would have a detrimental effect on the system." [14] In order to secure the confidence of the parties it was customary to appoint the chairman only after the dis-

trict employer and employee organizations had been consulted.[15]

In contrast to the chairman who received a remuneration, the "assessors" (employer-employee representatives) on the board served only in an honorary capacity. The employer and employee organizations had to submit to the Government lists from which the assessors were selected.[16] In general the organizations proposed qualified persons who had an intimate knowledge of the industry concerned, its technical characteristics and its economic situation.

A network of mediation boards covered the whole country and special boards could be established for particular branches in industry, commerce and agriculture to meet their specific needs.[17]

Mediators. For disputes of higher importance in a specified economic area, usually covering the territory of several local mediation boards, the Order of October 30, 1923, created a new post: permanent and temporary mediators *(Schlichter).*

The permanent mediators, about 16 in number[18] for the whole country, were federal officials appointed by the Federal Ministry of Labor. In addition to these "permanent" mediators, the Federal Ministry of Labor was entitled to appoint "temporary" mediators for specified individual cases. In adopting the principle of a "one man authority," the Decree considerably simplified and accelerated the procedure. The mediators were selected from persons of prominence in public life.

Federal Ministry of Labor. The third mediation authority was the Federal Minister of Labor. He acted primarily in a supervisory capacity[19] and had to assure uniform wage policy. Section 7 of the Mediation Decree empowered him to this effect: "to issue general guiding principles." He could intervene directly in conflicts of particular importance by appointing a special mediator.

It is true the mediation boards and mediators were not bound by instructions in individual cases.[20] How-

ever, their independence was limited inasmuch as they had to apply the directives laid down in the circulars issued by the Minister of Labor in the interest of a uniform wage policy. These principles were in practice generally followed and seldom gave rise to difficulties. As a matter of fact, the Minister of Labor, in the exercise of his power to appoint and remove mediators, carefully entrusted this duty only to those who were certain to guarantee the strict application of these principles.

IV.

Procedure

1. *The commencement of proceedings.* Arbitration proceedings could be initiated in three ways: by an application of the parties concerned, on the initiative of the mediation boards, or at the request of a public authority. The German system adopted the two former methods.

(a) Application by the parties: The first step in the proceedings was normally an application by "one of the parties."[21] No special form was prescribed. As will be seen in a more detailed description of the proceedings, arbitration was distinguished by its informality. The primary objective of reaching a voluntarily agreed settlement was not hampered by cumbersome formalities.

However, not in every case was an application in itself sufficient to set the arbitration machinery in motion. A second condition had to be fulfilled. The mediation board was bound to act only if, in its opinion, the case was of "special importance."[22]

(b) Who could be party to a mediation proceeding? In general only those who were qualified to conclude collective agreements were entitled to appeal to the mediation authorities.[23] The capacity to conclude collective agreements[24] and the qualification for arbitration were equivalent.

(c) Official action. The proceedings could be initiated not only at the request of one of the parties but also on the initiative of the mediation board itself. The board was entitled to open the proceedings and it had the duty to take this action "when public interest demanded such intervention."[25]

2. *The proceedings* were divided into three parts: the preliminary proceedings which took place before the chairman alone, the board proceedings (*Kammerverfahren)* before the mediation board (chairman plus assessors) and the supplementary proceedings. The preliminary proceedings were the informal efforts at mediation undertaken by a single conciliator—the chairman of the mediation board. Board proceedings which followed a failure of conciliation attempts, were held before all members of the board (whole board). Supplementary proceedings—among all arbitration systems known only to German labor law—were instituted to give the parties a final chance to meet and to come to an agreement before the board declared the award binding.

(a) Preliminary proceedings: In the first instance, the controversy had to be argued solely before the chairman whose legal duty was to make every attempt to secure a voluntary agreement.[26] "Experience in the adjustment of labor disputes in this and in other countries has shown that it is best for an impartial chairman first of all to attempt mediation."[27]

The method adopted for mediation was dictated by the circumstances of each individual case. Since the main objective was to induce the parties to come to a voluntary settlement, the procedure was not bound by hard and fast rules and not hampered by formalities.[28] The only requirements were directness and secrecy.[29] All principles governing legal procedure were discarded and technicalities reduced to a minimum.[30] Lawyers were excluded, as such representation by counsel was considered inconsistent with the very nature of mediation. During the entire course of the proceedings the chairman had to be constantly aware of his main task

to compose differences and to bring about a freely consented agreement. For this reason the preliminary proceedings were never held in public.[31] Whenever a chairman succeeded in conciliating the conflicting claims and in securing an agreement, it had to be definitely worded and signed by the representatives of the parties. If, however, the efforts of the chairman did not lead to an understanding, the case had to be referred to the mediation board.[32]

(b) Board proceedings: The rules governing the procedure before the whole board were in principle identical with those of the preliminary proceedings. Contrary to the preliminary proceedings, however, the negotiations before the board were public.

Obligation to attend personally.—The parties had to appear in person but could not be compelled to negotiate before the board. Failure to appear might entail a fine.[33] Although the parties could not be forced to negotiate, this hardly worked to their advantage since the board was entitled to issue an award regardless of one party's refusal to discuss the matter.[34]

Evidence.—There were likewise no definite rules with respect to the taking of evidence. Most arbitration systems which provide for compulsory enforcement of their awards have attempted to facilitate the task of the arbitration authorities by investing them with considerable compulsory power, thus enabling them to throw all possible light on the dispute involved. These powers include the right to compel the parties to give information and even to produce their books and documents, to proceed to inspection on the spot, to examine witnesses and experts under oath and if necessary to hold them in contempt of court. The regulations in Australia and New Zealand are typical examples of this type.[35]

There were no similar provisions in German law. In order to clarify points at issue the board questioned the parties and instructed them to supply evidence or to produce for examination persons well informed on the subject matter.[36] Yet there were no means of ob-

taining such evidence if one of the parties refused to follow the instructions. The board could not order an employer to produce his books or have them inspected by experts. Moreover, the persons heard before the board *(Auskunftspersonen)* were neither witnesses nor experts, in the usual legal sense, and they could not be sworn.[37] In spite of this lack of definite rules of evidence which forced the board to rely chiefly on the testimony of the parties, proceedings were generally unimpeded and furnished a sufficient base of decision. As a matter of fact, this informality proved effective.

Not only in the preliminary proceedings but even before the whole board until the very end of the session, the chairman had to continue his efforts to bring about a freely agreed settlement. Should these attempts definitely fail, the board had to render an award.[38] Such an award had to consist in the submission of a complete draft of a trade agreement.

The board fixed a specified date by which the parties had to announce their acceptance of the award. If they accepted it, the award was equivalent to a voluntary agreement. If rejected by both or by one party, the award could be declared binding by the State mediator. The declaration that an award was binding dispensed with its acceptance by either or both parties.[39]

Voting.—The award required a majority vote. If there were more than two opinions, none of which was supported by the majority of the board members, and if all efforts to have a majority on one opinion remained unsuccessful, the chairman alone had to decide;[40] in other words, a "one-man award" was rendered. Thus the chairman's vote carried, even if it deviated from that of the board assessors whose vote in general reflected only the opinion of the respective parties.

This system proved effective for many years and produced equitable results. In 1929, however, the Federal Labor Court decided in the famous "Ruhr-Eisen conflict" that the provisions of the Administrative Order on which the chairman's prerogative was based,

was inconsistent with the majority principle as established by the Mediation Order.[41] This invalidation of a long established practice gave no consideration to the necessities of mediation which require a decision even over the dissent of the majority of the board. It created much confusion and was utterly condemned by legal authorities as well as Government officials.[42]

In normal times the possibility of leaving a labor dispute unsolved would not have caused much concern. This might even have encouraged employer and worker representatives to coöperate actively and thus increased their sense of responsibility. However, during the serious depression which began in 1930 and strongly accentuated labor controversies, it was found necessary and consistent with the principles of mediation to adopt an Emergency Order, providing for a method of rendering awards over the dissent of the employer and employee assessors. The State would have renounced one of its most effective weapons if in particularly critical cases—those very cases for which it had been invested with such power—it would have left the parties to their own devices, instead of guaranteeing a decision on which to base a compulsory settlement of the dispute.

But the new Emergency Order did not simply reintroduce the chairman's prerogative; it gave the Minister of Labor the power to order the mediators to coopt two additional impartial assessors into the board besides those who already represented the employers and employees. "If during the proceedings of the mediation board or at the final vote, the chairman ascertains that it is neither possible to induce the members of the board to an absolute majority, then the mediator and the two additional impartial members shall issue the award."[43] In this way an award could always be issued in a dispute of public importance and it could be declared binding by the Minister of Labor. This decree neutralized the harmful effect of the "Ruhr-Eisen" decision, at least in cases of major industrial conflicts.

(c) Supplementary proceedings through which

awards were declared binding.[44] "Though it is obvious that the true object of conciliation was to bring about voluntary agreements between the parties and that compulsory measures are contrary to its nature, without this compulsion the system will often, because of human imperfection and particularly in times of industrial and social unrest, prove a completely unserviceable weapon in the hands of the State and of the disputing parties."[45] These considerations motivated the compulsory feature of the German arbitration system. According to the principles set forth in Section 6 of the Administrative Order an award was to be declared binding when it "appeared just and reasonable with due consideration to the interests of both parties and if its enforcement was desirable for economic and social reasons." The State should use compulsion only if an award was equitable and if its enforcement was necessary, economically and socially.[46] There were wide variations made in the policies of declaring an award binding. After the stabilization of the currency in December, 1923, attempts were made to reduce as far as possible the number of binding awards.[47] Nevertheless, compulsion had to be frequently used in order to put an end to continuous strikes and lockouts.

The right to declare an award binding was reserved to the mediators and to the Minister of Labor. The mediator had the power to declare binding the awards rendered by local mediation boards. Awards rendered by mediators were declared binding by the Minister of Labor. Both, the Minister of Labor and the mediators acted alone (without assessors) in this matter.

In order to decide whether an award was to be declared binding, the mediator or Minister of Labor reexamined the award in a supplementary hearing in which the parties could present the arguments for rejection of the award. Prior to 1923, if the investigation showed that important evidence concerning essential questions had not been taken into account or given due consideration, the dispute could be referred back to

the local mediation board to be discussed and decided on a second time. This practice was discontinued by the Mediation Decree of October 30, 1923. However, at the hearing before the mediator all arguments and evidence previously submitted to the original mediation board could be presented again. The first and main objective still prevailed: to induce the parties to reach an agreement. In most arbitration systems when conciliation failed prior to the rendering of an award, the means of achieving a settlement were exhausted. Supplementary proceedings, held before the award was declared binding, existed only in Germany. Their purpose was to allow the parties a last chance to meet and to come to an agreement. If this last attempt failed, the only decision to be made was whether or not the award should be declared binding. The mediator could not modify the award, and he could declare a *part* of the award binding only if there was no connection between such part and the remainder of the award.[48]

Decisions were rendered in writing.[49] They were usually accompanied by a statement of the reasons on which they were based although this was not prescribed by law. Such a decision was final and could not be reviewed or modified either by the mediator himself or by any higher authority.

3. *Legal remedies against arbitration decisions.* As the award was an administrative act, the law courts were equally bound to uphold the decisions and had no power to question its expediency. The findings and facts which led to an award and to a declaration by which it was made binding, could not be reviewed.[50]

Only when there had been essential flaws in the proceedings, when an inoperative award was declared binding, was the award in itself null and void. Many cases had been brought before the law courts on these grounds.[51] For instance, awards could be nullified when a mediation board was set up by collective agreement and the official mediation board nevertheless rendered an award; likewise when a board which lacked local

jurisdiction intervened.[52] Annulment was also permissible when the mediation board was constituted in violation of law, or when it had no independent chairman, or when it was not composed of an equal number of employee and employer representatives. Should an award infringe upon an existing collective agreement, it was equally invalid.[53] When an award was invalidated, the position was the same as if no proceedings had taken place, and a new application could be submitted to the mediation authorities.

A binding award did not expressly provide for enforcibility nor for penalties or other sanctions to secure the execution of the award. Rarely, however, did the parties refuse to carry out the terms of a binding award. If they did, their conduct gave rise to a cause of action in the ordinary courts. The recalcitrant party, guilty of breach of contract, could be subjected to the payment of damages.

All proceedings before the mediation authorities were without costs or fees.

V.

Summary and Results

The dominant feature of the German system was that it combined mediation and arbitration, in contrast to the French system where the two proceedings were separated. A further characteristic of German law was the supplementary proceedings as distinguished from the mediation proper. The German system that hinged on the supplementary proceedings whereby awards were declared binding, "bore the brunt of criticism."[54] The extent and significance of this criticism became apparent at a conference in 1929 of the Society for Social Reform (*"Gesellschaft für soziale Reform"*) which devoted itself to the problem of mediation and arbitration.[55]

At this conference the views of labor and management as well as those of the Government were represented

by noted authorities in the field of Labor Law. It was significant that neither labor nor management was in principal opposed to mediation and arbitration. They recognized mediation as the normal method of settling collective disputes.

Although opposed to the compulsory feature in the mediation system during its introductory period,[56] the trade unions soon took a favorable attitude because of their conviction that the mediation boards had fulfilled their functions successfully.

The employers, on the other hand, expressed disapproval of the existing system inasmuch as it permitted an altogether excessive use of binding declarations. They accused it of undermining the sense of responsibility of the parties. A proposal for an amendment of the Mediation Decree published by the Federation of German Employers Associations gave this viewpoint its clearest expression. It called for a limitation of the boards' compulsory powers. "Awards should be declared generally binding only in controversies of vital importance, or in collective disputes seriously threatening or affecting the economic life." [57]

The spokesmen for Labor and the Government's representative objected on the grounds that restriction to narrowly defined cases would enable employers to evade collective bargaining; that a wedge would be driven into the mediation system, thus endangering the collective structure of industrial relations. This campaign, aiming at vitiating the arbitration system, failed, and compulsory powers remained intact until the collapse of the German Republic.

The extent of mediation and arbitration may be seen from the following statistical data:[58]

Year	*Number of cases brought before the mediation authorities*
1924	18,575
1925	13,418
1926	5,043
1927	8,436
1928	8,037
1929	7,109
1930	4,017
1931	6,898
1932	4,791

These figures require some preliminary remarks: They refer only to cases handled by the official mediation machinery and do not reveal the considerable number of disputes settled by those mediation boards which were set up in collective trade agreements. Furthermore, these official records throw no light on the numerical importance of the cases involved as the disputes before the Minister of Labor and the mediators covered conflicts affecting groups of employees, often a hundred times larger than those settled by local mediation boards.

With this reservation the statistics show that more than 50% of the disputes that came before the boards, led to an award. Only 30% of these awards were accepted by both parties. In the majority of the cases the awards had to be declared binding. Rejections by employers were twice as frequent as those by employees.[59]

An investigation of the trade unions showed even a more unfavorable result than the official data. According to their figures mediation proceedings in 1930 resulted in the voluntary conclusion of 136 collective agreements covering approximately 220,000 employees, while 312 disputes comprising nearly 2 million wage-earners had to be settled by compulsory arbitration awards.[60]

Regardless of how unfavorable the proportion between voluntary and compulsory arbitration might have

been, there can be no doubt that the mediation authorities achieved a considerable measure of success in the settlement of labor disputes and work stoppages, and that they reduced serious industrial disturbances to a considerable degree.

Neither collective bargaining nor mediation and arbitration could or would completely eliminate industrial warfare. The number of strikes and lockouts in the years from 1920-1932, as shown in the following chart,[61] gives conclusive proof of this fact.

STRIKES AND LOCKOUTS

1920-1932

Year	*Number of disputes:*	*Number of enterprises affected:*	*Number of wage-earners affected:*	*Lost working days*
1920	3,807	42,268	1,429,116	16,755,614
1921	4,455	55,237	1,489,454	25,874,452
1922	4,785	47,501	1,823,921	27,733,833
1923	2,046	24,175	1,606,501	12,477,712
1924	1,973	28,430	1,618,011	36,197,888
1925	1,730	25,162	753,647	16,934,829
1926	358	2,836	92,456	1,251,366
1927	853	10,403	485,658	7,148,250
1928	743	7,864	719,850	20,355,365
1929	435	8,584	179,667	4,254,877
1930	356	3,416	213,201	4,030,717
1931	478	4,774	167,572	1,893,723
1932	657	2,632	127,720	1,137,890

But it would be no less erroneous to attribute the increase and decrease of strikes and lockouts, as illustrated in the above figures, to the functioning of mediation and arbitration alone. Other important economic factors were likewise responsible for both the increase and decrease in the number of disputes. The extremely high number of strikes and lockouts in the years 1920-1923 reflects the chaotic situation of the inflation period. In 1924 and 1925 the adjustment of wages to normal

living conditions led to a sharp decline in the number of open conflicts—60% less than in 1922, the year showing the highest number of disputes and lost working days in post-war Germany. In 1926 the number of strikes and lockouts had been reduced to 10% of those in 1922. This reduction was due in a large degree to the stabilization and improvement of the economic situation. The fact, however, that wages during this period were considerably increased without resort to open conflict, must undoubtedly be attributed to the functioning of the mediation system.[62] The arbitration system proved effective also in the years of depression (1930-1932). Of course, it could not solve unemployment, but it succeeded in preventing a serious break in the wage scale.

All in all, the system can be credited with a considerable measure of success both in the prevention and the settlement of labor conflicts.

B.

France

I.

Historical Development

Systems of conciliation and arbitration present two dominant types: optional or voluntary arbitration, and compulsory arbitration.

Optional arbitration, characterizing the first phase of conciliation and arbitration methods in France, lasted from 1892 to 1937. As early as 1892 a statute was enacted providing for conciliation and arbitration of collective disputes between employers and employees. It imposed no obligation on the parties to take recourse to the conciliation procedure. Conciliation was effected through *temporary* committees set up only in the event of a dispute. No *permanent* mediation organization existed. The conciliation committee was presided over by the "Justice of Peace" who directed the proceedings and

assisted the parties in their discussions. The formation of the conciliation committee was left to the parties themselves who selected their representatives. If an agreement was reached, a statement was signed by the parties and transmitted through the Justice of Peace to the Mayor of the community concerned. Applications for conciliation proceedings and refusals to take part in them were made public. Where conciliation proceedings failed, the Justice of Peace tried to persuade the parties to submit to arbitration. The formation of the arbitration board, like that of the conciliation committee, was left to the parties. An arbitration award accepted by the parties had the force of a collective agreement.

"The law did not desire to give to each of the proposed measures an obligatory character. The parties were always free to have recourse to mediation proceedings or not, and to accept or to refuse the findings. In the event of failure they had the right, but not the obligation, to seek arbitration, which is essentially optional. Finally, a settlement reached in the conciliation committee, as well as a duly rendered decision, had only a moral effect. The law voluntarily abstained from giving any power of execution." [63]

This system being entirely optional and not supported by sanctions, proved ineffective. Few conflicts and these only of minor importance were settled by voluntary arbitration. Statistics show [64] that the Conciliation and Arbitration Act had a narrow field of application and that its importance had steadily declined in recent years. "Far from being adequate in the prevention of strikes that affected a whole district, the present act is barely effective even in settling local disputes of any importance." Such was the conclusion of the inquiry of the Minister of Labor.[65] In this report it was pointed out that the Act of 1892, notoriously inadequate and incomplete, no longer corresponded in the slightest degree to present-day social needs.

A number of bills aiming at the improvement of

the arbitration system were introduced after the First World War. But this whole series of bills and proposals for the introduction of legislation on a compulsory basis never became law. The last vain attempt was made in June, 1929, when a bill, adopted by a large majority of the Chamber, met with such resistance in the Senate that it never passed. Under its terms recourse to arbitration procedure would have been compulsory. Not until 1936 did the French legislature deviate from the principle of voluntary conciliation of the 1892 Act.[66] In that year it created adequate arbitration machinery within the framework of the Popular Front Government's social reforms. Even then was the Arbitration Act a stumbling block, and an adequate arbitration system could be reached only step by step.

II.

The First French Act on Compulsory Arbitration

The first act on compulsory arbitration was promulgated on December 31, 1936,[67] completed by decree of January 16, 1937,[68] and modified by decree of September 18, 1937.[69]

The essential characteristics of this act were as follows:

1. Conciliation and arbitration proceedings were not combined, as in the German system, but separated and entrusted to different authorities.

2. Compulsory arbitration embraced only industry and commerce, whereas agriculture and the free professions were excluded from this procedure.

3. The act drew a distinction between the official machinery and mediation committees set up by collective agreements. The statutory boards were given only a subsidiary function. When mediation procedure had been provided for in collective agreements, it had precedence over the official machinery so that only such disputes as were not governed by collective agreements

with arbitration provisions, reached the official mediation authorities.

4. The French legislation provided for a conditional suspension of industrial warfare. Every conflict had to be submitted to the mediation authorities before a strike or lockout could be declared. In other words, an open conflict was prohibited and deemed to be illegal until every possibility of conciliation and arbitration was exhausted. During the debates in the Chamber it had been admitted that strikes or lockouts could not be entirely avoided even under the wisest arbitration system. If, however, the arbitration system was to ensure the maintenance of industrial peace, it was deemed essential that the parties should use its facilities before taking recourse to open conflict.[70]

The French law, going far beyond the German system in this respect, was inspired by the draft of the German Order of October, 1922, which never became law. Section 55 of this order provided that the mediation body had to be appealed to before a strike or lockout could be declared. This conditional suspension of strikes and lockouts was considered a basic safeguard of peaceful negotiations.

Mediation proceedings.—The conciliation proceedings were set in motion by an application of one of the parties or at the request of the Prefect. The law provided for three stages in conciliation.

The first was a departmental commission of conciliation *(Commission Départementale de Conciliation)* composed of an equal number of employer and employee representatives who were designated by the Prefect from lists submitted by employer and employee organizations. The proceedings were conducted under the direction of the Prefect or his delegate—in practice, always the Inspector of Labor *(Inspecteur du Travail)*.

If this commission was unable to settle the dispute within four days, it was brought before the second degree of conciliation, the mixed conciliation commission *(Commission Mixte Paritaire de Conciliation)*

composed of representatives of the national employers and employees federations and presided over by a delegate of the Minister of Labor.

Should the efforts of this committee not lead to an understanding within a further four days, the case could be transferred to the third and last conciliation body, "*La Commission Interprofessionnelle de Conciliation.*" This was the national inter-occupational commission, comprising delegates of the "most representative" employer and employee confederations under the chairmanship of the Minister himself, or his personal delegate.

Thus the hierarchy of mediation committees corresponded to the structure of the organizations themselves: local at the base, regional in the second stage, and national at the peak. Only after these three stages were exhausted, was the dispute ripe for arbitration. The arbitrators were selected by the parties and considered themselves more as their representatives than as independent members of an arbitration board. They seldom unanimously consented to an award. Usually their deliberations ended with a statement whose wording even followed a stereotype form:

"Labor and management arbitrators have met such and such day at the Préfecture for the purpose of arbitrating such and such dispute. After an exchange of views, they have come to the conclusion that they are not able to agree and have requested the president of the council (Président du Conseil) to designate a super-arbiter, qualified to settle the points at issue."

The super-arbiter could be selected by the arbitrators or by the Prime Minister. However, as the arbitrators never reached an understanding, the choice was usually left to the Prime Minister who was confined in his selection to a list of thirty super-arbiters. This panel had been established in advance in accordance with the proposals of the General Confederation of Labor and the General Employers Confederation.

Only when three successive attempts to settle the con-

flict failed, could arbitration proceedings be instituted. Needless to say, this machinery was far too complicated. The original hope of the legislators was to calm the opposite points of view and to bring about an agreement through the prolongation of discussions and through negotiations before different bodies which became more and more detached from the conflict. These hopes ended in disappointment. In fact, the conflicts were accentuated by the duration of the proceedings whose legal time limits were, by the way, never respected. In order to ward off obstructionist tactics in the proceedings which endangered the very institution of mediation, a simplification and improvement of the arbitration machinery was considered indispensable. A statute enacted on March 4, 1938,[71] and completed by the Decree of November 12, 1938,[72] accomplished the necessary reforms.

III.

The Arbitration Statute of 1938

The recast statute expedited proceedings by reducing the conciliation stages from three to one. Failure of conciliation automatically set arbitration in motion. The arbitration machinery was simplified by the introduction of two novel features:

1. In all collective agreements arbitrators had to be appointed in advance for the duration of the agreement.

2. These arbitrators intervened automatically in disputes which could not be settled before the conciliation committee within the prescribed time limit.

1. *Principles and Nature of Mediation and Arbitration.* The object of arbitration under the German system was "assistance in the conclusion of collective agreements." It followed from this definition that only collective disputes could be settled by the mediation authorities, and that individual disputes were excluded from the mediation machinery. To this extent the French

system was identical with that of Republican Germany as it likewise excluded individual disputes and put the mediation machinery at the disposal of the parties only for collective conflicts.[73] But here the resemblance ends. In Germany the scope of mediation procedure was limited to collective disputes on interests, to the exclusion of collective disputes on rights; in France the mediation authorities had jurisdiction over both types of collective disputes.

The distinction between disputes on rights and disputes on interests which limited the scope of the German mediation procedure, was also approved by French legal theory.—"Adjudication should be left to judicial bodies and regulation to regulation bodies."[74] But the French law, instead of adopting this logical distinction between the two functions, invested jurisdiction over collective conflicts on rights *(conflits d'ordre juridique)* as well as collective conflicts on interests *(conflits d'ordre économique)* in the mediation authorities.

As no legal definition of the term "collective labor conflicts" existed, almost every economic or legal dispute, if it could possibly result in a strike or lockout, was in the language of the statute subject to arbitration.[75] Such a broad application of the statute met with resistance on the part of the Superior Court of Arbitration which specified and clearly defined the jurisdiction of arbitrators. It objected to an extensive interpretation of the statutary terms and recognized as collective disputes only those which "aimed at the conclusion of a trade agreement,"[76] or "which arose out of the application, alteration or interpretation of collective agreements."[77] The courts included in the first group conflicts which arose from measures taken against individual employees when such conflicts might have repercussions of a general nature: for example, a dispute arising out of the discharge of a worker's delegate in connection with the exercise of his function, if such controversy threatened to lead to a strike.[78]

The functions of the arbitrators differed widely, de-

pending on whether they were concerned with legal or economic disputes. In the former group they acted as judges, applying the law and interpreting agreements in the same manner as a law court would decide on positive legal grounds. Consequently the arbitrators, as a rule, could not disregard or modify existing agreements. The French doctrine of "*imprévision*" provided the possibility, however, of revision even where an agreement was concluded for a definite period and still had considerable time to run. This doctrine was applied during the inflation period in 1937 in order to adjust wages to the rising cost of living.[79]

Inspired by these ideas the Arbitration Act of March, 4, 1938, recognized and adopted the principle of the sliding wage scale *(échelle mobile)*, permitting wage increases according to the cost-of-living index. [80] A demand in revision pre-supposed that the cost-of-living index had risen more than ten percent. A five percent rise justified an increase only when a period of six months from the last demand for a wage adjustment had elapsed. In these cases wages had to be adjusted in proportion to the variation, unless it could be proved that this adjustment was incompatible with the economic conditions of the local original industry.

Whereas the arbitration authorities had to decide conflicts on rights in accordance with law, conflicts on interests had to be settled according to fairness and justice. The French arbitration authorities judged "equity" by the same principles as prevailed in Republican Germany.[81]

2. *Arbitration authorities.* The mediation authorities consisted of the Conciliation Commission, the Arbitrators, the Super-Arbitrators and the Superior Court of Arbitration.

(a) Conciliation Commissions: The law provided for two kinds of conciliation commissions—departmental or national. The services of one or the other commission were drawn upon, depending upon whether a dispute was regional or national in scope.

The *Departmental Conciliation Commission (Commission Départementale de Conciliation)* consisted of an equal number of employers and employee representatives presided over by the Prefect as impartial chairman.[82]

The employer and employee members of the conciliation commission were appointed annually by the Prefect who selected them from lists submitted to him by local unions and the local employer associations.

Disputes of greater importance, involving several large districts, had to be negotiated before the *National Conciliation Commission* whose members were appointed from lists of representatives of the national employer and employee organizations. The National Conciliation Commission was presided over by a Cabinet Minister, or his delegate.[83]

(b) Arbitrators: Wherever a trade agreement existed, a provision calling for the appointment of arbitrators for the duration of the agreement was obligatory.

In the absence of a collective agreement, the parties had to nominate the arbitrators within two days after failure of conciliation proceedings. Where the parties failed to perform this duty, the arbitrators were appointed by the Prefect, or, in cases of national importance, by the competent Minister from lists prepared in advance. These lists, submitted by the Prefect after consultation of the most representative employer and employee organizations,[84] were established by the President of the Court of Appeals.

(c) Super-Arbitrators: The super-arbitrators occupying the most important and decisive place in the French arbitration system were appointed by the arbitrators, or in case of disagreement by the Prefect or appropriate Minister.[85]

(d) The Superior Court of Arbitration: This high court of arbitration created by the Arbitration Act of March 4, 1938, was organized by Decree of April 3, 1938.[86] Its members who were appointed for a period

of two years, included the Vice-President of the Council of State *(Vice-Président du Conseil d'Etat)* acting as president, the president of a section of the Council of State, two high officials of the judiciary and two high Government officials, either in active service or retired.

The composition of the Superior Court was the result of a compromise between those who wished to entrust appellate jurisdiction to the Supreme Law Court *(Cour de Cassation)* and those who would have preferred the competence of the highest administrative court *(Conseil d'Etat)*. The law solved the problem by creating a special judicial body: The Superior Court of Arbitration composed of members of *both* departments.

3. *Procedure.* The proceedings, as in German practice,[87] could be set in motion by application of either party or at the request of the Prefect.

(a) Conciliation. First, the dispute had to be argued before the conciliation committee. The parties were expected to appear before this committee in person. Representation by counsel, although not expressly prohibited as in German law, was unusual. While personal appearance could not be enforced, the commission had a more indirect but nevertheless efficient means of exerting pressure to this effect. If the complainant did not appear, the application was considered withdrawn.[88] If the respondent did not appear or refused to negotiate, conciliation proceedings were deemed to have failed.[89]

When an agreement was reached, an official report was signed by the chairman and the parties to the controversy.[90] If the parties failed to reach a settlement, the subject matter of their conflict and the points at issue were recorded in writing.[91] Such a report was of far-reaching importance, as it determined and limited the jurisdiction of the arbitrators. The arbitrators and the referee could consider only those issues which appeared in the minutes of the conciliation commission.

(b) Arbitration. Failure of conciliation led automatically to arbitration. If a conflict remained unsettled, arbitration proceedings were immediately com-

menced. These proceedings, similar to German practice, were not hampered by formalities. Technicalities were reduced to a minimum,[92] with almost no rules on evidence in force. The only provision[93] was that the parties had the right to be heard before the arbitrators and that they might submit documents. There were no means of compelling the production of evidence if either party refused to submit proper proof.[94] The arbitrators could clarify doubtful points principally by questioning the parties.

When the arbitrators could agree on an award—which was the exception and not the rule—proceedings thus came to an end. In general, the matter had to be referred to the super-arbitrator.

The *super-arbitrator* could hear the parties as well as the arbitrators. In default of a voluntary agreement, he had to issue an award—a "one-man-decision," as in the German system. The award, which had to give reasons, was binding and non-appealable under the Arbitration Act of December 31, 1936. Nevertheless, several attempts were made to submit awards for review to the court of cassation and the *Conseil d'Etat.* The court of cassation refused to take jurisdiction.[95] The *Conseil d'Etat* had not yet decided on its own jurisdiction when the law of March 4, 1938, solved the problem by creating a special tribunal, the Superior Court of Arbitration, which could be appealed to within three days after the announcement of an award.[96]

The court's power of review was confined to questions of law in that it was bound by the findings and facts which led to the award.

Only three reasons: "incompetence," "excess of power" and "legal error" *(violation de droit)* constituted the basis for an appeal to the Superior Court of Arbitration.[97] "Excess of power" characterized decisions made on points which had not been submitted to arbitration by the statement of non-conciliation. The law was considered "violated" when an award was contrary to the legal provisions in force. But not every "violation

of law" led to a reversal of the award, as in Germany.[98] Minor irregularities in procedure did not justify a reversal.[99]

A special power of appeal was retained by the Minister of Labor who, on advice of the National Economic Council, could within eight days after notification require a review in every respect of the award,[100] provided it appeared contrary to public interests.[101]

The Superior Court of Arbitration had to render its decision within eight days after the appeal had been taken. In cases concerning jurisdiction the deadline was even reduced to five days.[102]

The award could either be confirmed or annulled by the court. If confirmed, the matter was definitely settled. If annulled, a new referee had to be appointed. Of course, as the Superior Court of Arbitration judged only questions of law, it did not take the place of the arbitrators or super-arbitrators in settling the controversy itself. Therefore it had to appoint a new super-arbitrator where an award had to be reversed. The new super-arbitrator was free to determine and weigh the facts. Should his decision again be reversed, the Superior Court of Arbitration had to refer the matter to a "special master" upon whose report the court issued its final decision.[103]

(c) Enforcement of awards. Under the statute of December, 1936, a binding award contained no sanctions or other provisions to secure its execution. It could therefore be enforced only by an action at law for breach of contract. This system was similar to that of Republican Germany where it had proved satisfactory.[104] In France, however, awards often remained unexecuted.[105] Eventually the legislature had to intervene by introducing a whole series of provisions aiming at the enforcement of awards.

Thus, a decree of November 12, 1938,[106] provided for the following direct and indirect measures of enforcement:

(a) Unions and employer associations could take legal action.[107]

(b) Each person interested in the award could ask the super-arbitrator to certify to the non-execution of an award and to impose a fine[108] on a recalcitrant party, such fine being payable to the public treasury for the benefit of public organizations in the service of social welfare. Pursuant to this provision, penalties had been imposed in seven cases by January, 1939.[109]

(c) In addition to these direct methods of enforcement of awards, there was an indirect though not less effective one: recalcitrant employers were liable to curtailment of their legal rights. They could be expelled from membership in the Chamber of Commerce and suspended as assessors of the Courts of Commerce and the Labor Courts *(Prud'hommes)* for three years. Furthermore, they were not entitled to obtain public contracts.[110]

A non-complying employee was considered guilty of breach of contract, justifying his discharge without notice and the loss of his rights to holidays with pay.[111]

These measures proved quite effective in assuring the execution of the awards.

IV.

The Operation of Mediation and Arbitration

Despite its short life the "law on mediation and arbitration has rendered the greatest service to the country."[112]

The balance sheet of its results was as follows:

During the two years of its operation for which statistical data are available,[113] 12,309 conflicts were brought to the attention of the Prefects. Of these disputes 4,257 (about 35%) were settled without recourse to the Departmental Commission of Conciliation — either by direct negotiation or by voluntary arbitration. Of the remaining 7,590 disputes brought before the Departmental Conciliation Commission, 3,067 (42%)

led to an agreement. According to these figures—and this is the most impressive result—out of the total of reported conflicts, 60% were settled in the first stage of mediation.

Non-settled conflicts had to be submitted to the super-arbitrator in practically every case as the arbitrators rarely rendered a decision. Out of 2,471 awards made between March 1, 1938, and February 1, 1939, only 108 (less than 4%) were rendered by the arbitrators. They seldom even agreed on a super-arbitrator, so that the State authorities (Prime Minister and Minister of Labor) had to designate super-arbitrators in 3,003 instances. Of their awards, 1,822 were submitted for review to the Superior Court of Arbitration which by the end of 1938 had issued 769 decisions; two-thirds of these upheld the super-arbitrators' awards.

An analysis of French statistical data[114] requires the same reservations as a study of German official records. The French figures are in themselves not entirely conclusive as they do not reveal the number of disputes settled by direct negotiation, and as they are silent on the number of enterprises and employees affected by the various conflicts. However, these records can be supplemented by other important statistical data, namely the number of disputes which resulted in strikes or lockouts. In this respect, the facts are most elucidating; while in 1936 open conflicts had attained a record high, from 1937 onward their number decreased to the average of normal economic periods. This result must be primarily attributed to the mediation and arbitration procedure which largely led to calmer and more normal industrial relations.

The most significant fact revealed by the statistical data is that conciliation brought about the settlement of 60% of the conflicts. This favorable result proves that the mere existence of compulsory provisions in itself need not necessarily lead to an over-extensive use of compulsion. In this respect, France differed from Republican Germany where compulsory awards were the

rule and where the system of compulsory arbitration was accused of having undermined the sense of responsibility of the parties. That the same legal institutions led to quite opposite results in both countries proves the fallacy of this argument, as obviously the German shortcomings could not have been inherent in the arbitration system itself but must have had other origins.

The opposite results reached in the two countries seem to reflect basic differences in their national character: in France democratic tradition had been developed for more than a century, whereas in Germany democratic institutions had existed only sporadically and for short periods of time. In France, when industrial relations were once made part of democratic procedure, they functioned as a matter of course because of the Frenchman's traditional respect for democratic institutions.

On the other hand it is not less characteristic that in Germany official awards were, with few exceptions, strictly respected, although they contained no clause conferring enforceability or any other sanction; whereas in France cases of refusal to carry out compulsory awards were so prevalent that a whole series of statutary regulations had to be introduced to secure their execution. This also seems to throw an interesting sidelight on the different national character. The disciplined German obeys orders regardless of his personal feelings; whereas the Frenchman conforms with freely negotiated agreements, but opposes orders the fairness of which he questions, even though they are imposed by State authorities.

FOOTNOTES TO CHAPTER IV.

[1] *Reichsgesetzblatt*, 1916, p. 1333.

[2] Another reason for the awards being compulsory at least de facto if not de jure is indicated by Frida Wunderlich *Labor under German Democracy* (Arbitration 1918-1933) in "Social Research," an international quarterly of political and social science; Supplement II, p. 4.

[3] Issuance of the "change of work certificate" (Abkehrschein).

[4] Aufruf des Rates der Volksbeauftragten of November 12, 1918, Section 7 (*Reichsgesetzblatt*, 1918, p. 1303).

[5] *Reichsgesetzblatt*, 1918, p. 1456, Section 3, entitled "Mediation of Labor Disputes" (Schlichtung von Arbeitsstreitigkeiten); the first section of this decree deals with collective agreements, the second relating to work councils had been superseded by the Work Councils Act of February 4, 1920.

[6] *Reichsgesetzblatt*, 1923, I, p. 1043 and seq.; this decree was completed by an Administrative Order of December 29, 1923 (*Reichsgesetzblatt*, 1923, I, p. 1191. The Government was entitled to this legislative measure by virtue of the Emergency Powers Act of the same year.

[7] George Scelle "*Le Droit Ouvrier*," Librairie Collin, Paris, 1922, p. 135.

[8] Mediation Decree, Section 3.

[9] Labor Courts Act of December 23, 1926, *Reichsgesetzblatt*, 1926, p. 507, et seq.

[10] cf. Kaskel *Arbeitsrecht* 3. Auflage, 1928, p. 352; Herschel *Grundfragen der Schlichtung im Lichte der Rechtswissenschaft*, 1931, p. 11 and seq.

[11] Dersch *Schlichtungsverordnung* 2. Auflage, 1925, p. 38, p. 170.

[12] Judgment of the Federal Labor Court of January 22, 1929—International Labor Office, *International Survey of Legal Decisions of Labor Law* 1929, *Germany, No.* 24.

[13] Decree of October 30, 1923, Section 1, subsection 1. cf. the most instructive study: Höniger *Die Stellung des unparteiischen Vorsitzenden im Entwurf der Schlichtungsordnung*, 1923.

[14] Flatow *Die Schlichtungsverordnung*, Berlin, 1924, p. 101.

[15] Administrative Decree of December 29, 1923, Section 22, and Circular of the Federal Ministry of Labor, *Reichsarbeitsblatt*, 1924, p. 260, which reads: "Consideration is as far as possible given to the wishes of the industrial associations of employers and workers in the district, when appointing the chairmen of mediation boards."

[16] Decree, Section 1, subsection 3; Administrative Order, Section 4, subsection 1.

[17] For details regarding the organization of the boards, cf. Flatow *Neue Zeitschrift für Arbeitsrecht*, 1924, p. 75 and seq.

[18] The number varied from 13 to 20 during the course of the functioning of the decree (1923-1933) cf. survey *Reichsarbeitsblatt*, 1931, I, p. 602.

[19] cf. Lutz Richter "Die staatsrechtliche Stellung des Reichsarbeitsministers im Schlichtungsrecht" in *Neue Zeitschrift für Arbeitsrecht*, 1931, p. 729.

[20] The Minister could not intervene in the course of proceedings and give instructions with regard to the settlement of a pending case. Section 7 of the Mediation Order provided: "Mediation boards and mediators shall decide individual cases independently and shall not be bound by instructions."

[21] Mediation Order of October 30, 1923, Section 5.

[22] Administrative Order of December 29, 1923, Section 12.

[23] Exception for work agreements, Administrative Order, December 29, 1923, Section 16.

[24] cf. supra, p. 42 et seq.

[25] Administrative Order, December 20, 1923, Section 12.

[26] Mediation Order, October 30, 1923, Section 5, subsection 2.

[27] Principles of the Minister of Labor, *Reichsarbeitsblatt*, 1923, p. 737.

[28] Hueck-Nipperdey *Lehrbuch des Arbeitsrechts* 3.-5. Auflage, 1932, vol. 2, § 41, p. 441 ("Grundsatz der Beweglichkeit und Formfreiheit des Verfahrens").

[29] Administrative Order, December 29, 1923, Section 20.
[30] Dersch *Schlichtungsverordnung*, §5, Footnote 11.

[31] Administrative Order, December 29, 1923, Section 20, subsection 1.

[32] Administrative Order, December 29, 1923, Section 20, subsection 2 and 3.

[33] Administrative Order, December 29, 1923, Section 15 and Section 16.

[34] Administrative Order, December 29, 1923, Section 21.

[35] International Labor Office *Studies and Reports* Series A No. 34, Australia, p. 609 and seq., p. 641 and seq.

[36] Administrative Order, December 29, 1923, Section 21, subsection 2.

[37] cf. Nonnenmann *Die Mittel zur Erforschung von Tatsachen im Schlichtungswesen*, 1931.

[38] Mediation Order, October 30, 1923, Section 5, subsection 3.

[39] Mediation Order, October 30, 1923, Section 6, subsection 1.

[40] Administrative Order, December 29, 1923, Section 21, subsection 5.

[41] International Survey of Legal Decisions on Labor Law, edited by the International Labor Office, Geneva, 1929, Germany, No. 24; Federal Labor Court in *Bensheimer Sammlung*, vol. 5, p. 167.

[42] F. Haymann *Die Mehrheitsentscheidung in Rechtsprechung und* Schlichtung, 1929; Jörges in *Schlichtungswesen*, 1929, p. 121 ad seq. Goepert in *Neue Zeitschrift für Arbeitsrecht*, 1931, p. 7 ad seq.

Decision of the District Labor Court (Landesarbeitsgericht) Duisburg in *Bensheimer Sammlung*, vol. 4, p. 60 ad seq. The viewpoint of management is exposed by Mansfeld-Grauert-Schoppen *Der Rechtsstreit im Arbeitskampf der westdeutschen Eisenindustrie*, 1929.

[43] Order of the Settlement of Industrial Disputes of Public Importance, January 9, 1931, *Reichsgesetzblatt*, 1931, I, p. 12. For details: Joachim, *Reichsarbeitsblatt*, 1931, No. 3; Flatow, "*Neue Zeitschrift für Arbeitsrecht*", 1931, No. 2.

[44] This right should not be confused with the declaration that collective agreements extended to outsiders were generally binding on them.

[45] Federal Court Judgment of July 8, 1924, *Juristische Wochenschrift*, 1924, p. 1594 and seq.

[46] Principles issued by the Federal Minister of Labor, *Reichsarbeitsblatt*, 1923, p. 737 and seq.

[47] Circular issued by the Federal Minister of Labor to mediators on January 30, 1924, *Reichsarbeitsblatt*, 1924, official part, p. 127.

[48] Dersch, *Kommentar zur Schlichtungsordnung*, footnote to Section 25.

Administrative Order of December 29, 1923.

[49] Administrative Order of December 29, 1923, Section 25.

[50] Hueck-Nipperdey *Lehrbuch des Arbeitsrechts*, vol. 2, p. 461 and seq. "The only possible subject for judicial review was the observance of the regulations of procedure."

[51] Federal Labor Court in *Bensheimer Sammlung*, vol. 5, p. 167, vol. 7, p. 246, vol. 8, p. 128, vol. 11, p. 60, vol. 12, p. 326.

[52] Federal Labor Court in *Bensheimer Sammlung*, vol. 5, p. 185, vol. 12, p. 557.

[53] Judgment of the Federal Labor Court of February 2, 1929 (Official Collection (*Amtliche Sammlung*), vol. 3, p. 231).

[54] International Labor Office, Geneva, *Studies and Reports*, Series A, No. 34 (Conciliation and Arbitration), p. 274.

[55] cf. Bericht über Verhandlungen der XI. Generalversammlung, Gesellschaft für soziale Reform, Jena 1930.

[57] cf. Bericht-Gesellschaft für soziale Reform, ibid, p. 94.

[58] *Reichsarbeitsblatt, 1932 (II), p. 466; 1933 (II), p. 397.*

[59] cf. Statistical data in *Reichsarbeitsblatt*, 1930 (II), pp. 46, 47; 1931 (II), pp. 372, 373; 1932 (II), pp. 138, 466; 1933 (II), p. 397.

[60] *Internationales Handwörterbuch des Gewerkschaftswesens*, vol. 2, p. 1399.

[61] *Statistisches Jahrbuch für das deutsche Reich*, vol. 45, p. 311, vol 52, p. 312.

[62] The increase in the number of lost working days in 1928 was due almost entirely to the "Ruhr-Eisen conflict," which affected a considerable number of workers.

[63] Thus, the Circular of the Ministry of Justice, dated February 18, 1893, reproduced in *Revue d'Economie Politique* Année 53, p. 667 sums up the scope and spirit of this law.

[64] Ministère du Travail, *Annuaire Statistique*, 1927, p. 129 and seq.

[65] "Reglement Amiable des Conflits Collectifs du Travail," *Enquêtes et Documents édités par le Ministère du Travail*, 1924, p. 9 and seq.

[66] Except during the First World War, when compulsory arbitration was set up in order to prevent stoppages of work. The initiative was taken by the Ministry of Munition in a decree of January 17, 1917 which made arbitration by a joint committee compulsory and endowed the awards of these committees with executive force. The Ministry of War followed and applied the system to all disputes in war industry. These regulations were in force only for the duration of the war. (cf. Roger Picard "Labor Legislation in France during and after the war" in *International Labor Review*, 1921, p. 37). We are confronted with the same reasons and ideas which led in Germany to similar arbitration institutions (cf. supra, p. 76).

[67] *Journal Officiel*, January, 1937, p. 127.

[68] *Journal Officiel*, January, 1937, p. 706.

[69] *Journal Officiel*, September, 1937, p. 10748.

[70] *Journal Officiel*, Débats Parlementaires, 1936, p. 3171, 3183 and seq.

[71] *Journal Officiel*, March, 1938, p. 2570.

[72] *Journal Officiel*, November, 1938, p. 12866.

[73] cf. Oualid *Revue d'Economie Politique, Année* 53, p. 689: "L'arbitrage obligatoire est limité aux conflits collectifs, de nature industrielle et commerciale, à l'exclusion des conflits individuels, lesquels sont du ressort des tribunaux de droit commun—conseils de prud'hommes en général."

[74] George Scelle *Le Droit Ouvrier*, Librairie Collin, Paris, 1922, p. 135.

[75] *Journal Officiel*, Documents Parlementaires, Sénat, 1936, p. 519.

[76] Superior Court of Arbitration No. 41, *Journal Officiel*, 1938, p. 1072.

[77] Superior Court of Arbitration No. 128, *Journal Officiel*, 1938, p. 1082

[78] Tissier "Répertoire Méthodique Permanent des Arrêts de la Cour Supérieure d'Arbitrage" No. 215 and seq.; other examples are cited by Rudolf B. Sobernheim and V. Henry Rothschild "Regulations of Labor Union and Labor Disputes in France" *Michigan Law Review*, vol. 37, 1939, p. 1075.

[79] *Journal Officiel*, Ann. February 3, 1938, Awards No. 143, 163.

[80] Section 10.

[81] cf. supra, p. 77, 78.

[82] Decree April 20, 1938, Section 3, *Journal Officiel*, April, 1938, p. 4606.

[83] Decree April 23, 1938, Section 4, *Journal Officiel*, 1938, p. 4698.

[84] Decree April 20, 1938, Section 9.

[85] Decree April 20, 1938, Section 10 cf. Act of December 31, 1936, Section 4 and Decree January 16, 1937.

[86] *Journal Officiel*, April, 1938, p. 4040.

[87] cf. supra, p. 82.

[88] Decree April 23, 1938, Section 7.

[89] Decree April 23, 1938, Section 8.

[90] Decree April 20, 1938, Section 6.

[91] Decree April 20, 1938, Section 7.

[92] cf. supra, p. 83, 84.

[93] Arbitration Act, March 4, 1938, Section 11.

[94] Rudolf B. Sobernheim and Henri Rothschild "Regulations of Labor Union and Labor Disputes in France" *Michigan Law Review*, Vol 37, 1939, Footnote 258 calls attention to the fact that the decision of the Superior Court of Arbitration (*Journal Officiel*, 1938, Ann., p. 1079) according to which no party was entitled to see the documents submitted by the other party, was inconsistent with Section 11 of the Arbitration Act and the Circular Letter of March 22, 1937 of the Ministry of Labor relative to the application of the arbitration proceedure in collective labor disputes.

[95] Cass. Civil, December 7, 1937, D. H., 1938. 18.

[96] Section 13, subsection 2.

[97] Section 13, subsection 3.

[98] Federal Labor Court in *Bensheimer Sammlung*, vol. 6, p. 628, vol. 11, p. 4.

[99] Decisions of the "Superior Court of Arbitration," *Journal Officiel*, Annexe August 6, 1938, p. 1071 and seq.

[100] Not only questions on *law* but also on *findings and facts*.

[101] Section 13, subsection 4 "Public Interests" was a not specified notion appreciated sovereignly by the Minister of Labor (SCA May 24, 1938, No. 38).

[102] Section 13, subsections 5 and 6.

[103] Decree of November 12, 1938, *Journal Officiel*, November, 1938, p. 12866.

[104] cf. supra, p. 91.

[105] Report to the President of the Republic, *Journal Officiel*, 1938, p. 12866.

[106] *Journal Officiel*, 1938, p. 12866.

[107] Section 5.

[108] Maximum francs 1,000,00 for each day of delay.

[109] *Revue d'Economie Politique*, Année 53, p. 695.

[110] Section 7.

[111] Section 8.

[112] *Journal Officiel*, January, 1938, Débats Parlementaires.

[113] January, 1937 to December, 1938.

[114] *Bulletin du Ministère du Travail*, 1938, p. 433 and 1939, p. 341; *Revue d'Economie Politique*, Année 53, p. 706 and seq.

Chapter V

Chapter V

EMPLOYEE REPRESENTATION IN THE SHOP

General Considerations

The multitude of forms which the institution of workers representation in the shop has taken in the various countries can be classified into two main categories:

1. Voluntary workers representation organized in individual establishments by the employers in agreement with their employees.
2. Compulsory workers representation organized in all enterprises on the basis of special legislation.

The shop committee movement in the United States and Canada, the Whitley councils and other systems of workers representation in England, belong to the first group.

The second type of workers representation, which is the subject of this study, embraces the Works Councils in pre-Hitler Germany and the Shop Committees in pre-war France.

A.

Works Councils in Germany[1]

I.

Origins and Development

It has often been stated that the works council movement in Germany had its origin in two entirely distinct and independent sources:

1. the shop committees that existed in Germany prior to the First World War
2. the workers and soldiers councils which arose throughout the country in the first days of the Revolution of November, 1918.

Yet the works councils established by German statute in 1920 had no points of contact with the shop committees of Imperial Germany. These committees had been introduced by an amendment to the Industrial Code in 1891 on the initiative of the employers as a check against organized labor. The trade unions were opposed to this institution which they denounced as a means of perpetuating "factory despotism." Moreover, these committees were not endowed with any powers worthy of mention. Their function was limited to that of "consultation" relative to factory rules. But there existed no obligation on the part of the employers to take their suggestions into consideration and, as a matter of fact, they were free to establish their factory rules independently of the opinion of this advisory board.

The post-war situation in Republican Germany was entirely different. The establishment of works councils, favored by labor and opposed by management, represented a new principle in German social legislation. The employers organizations, after having recovered from their first fright following the Revolution, characterized them as a "ruinous onslaught on the essential conditions of industrial enterprise."[2]

The only German legislative origin of the new works councils can be found in the Auxiliary Service Act of 1916,[3] calling for the compulsory establishment of workers committees composed of wage earning and salaried employees in all factories and plants employing more than 50 workers. It is true the scope of these committees was still limited. Nevertheless, they were endowed with certain basic rights and if an agreement in matters pertaining to factory rules could not be reached, they could appeal to the mediation board which had to render the final decision.

In principle the works councils must be considered as a direct product of the 1918 Revolution when workers and soldiers councils wielded power throughout Germany. With the meeting of the National Assembly the

political activity of the councils came to an end. The new constitution did not recognize works councils as a political institution. It maintained these councils, however, in the social and economic field.

It is worthy of note that the draft of the Constitution presented by the Government made no mention of the councils. On February 25, 1919, the Chancellor declared officially: "No member of the Cabinet contemplates the incorporation, in any form, of the councils system in the Constitution."[4] This declaration produced a deep indignation among labor and was met with a series of strikes throughout the country. The Cabinet, realizing the untoward effect of this declaration, was forced to retract and to replace it ten days later with the assurance that the works councils would be recognized as the representatives of the workers and be incorporated in the Constitution.

In fulfillment of this promise the following provision was inserted in the Constitution:

"For the purpose of safeguarding their social and economic interests, the wage earning and salaried employees are entitled to be represented in works councils for each establishment as well as in regional works councils organized for each industrial area and likewise in a Federal Works Council."[5]

The idea was to create a special official representative body which should comprise all workers and salaried employees. But only one of these several bodies took shape: the works councils in individual enterprises, set up under the law of February 4, 1920,[6] and representing the lowest stage in the system of works councils outlined in the Constitution. The others were never realized.

II.

Types of Workers Representation Bodies

The act provided for two types of representation: In all private or public undertakings normally em-

ploying not less than twenty persons, a works council had to be elected by the staff.[7]

In establishments having normally from five to nineteen employees, the shop stewards *(Betriebsobmänner)* constituted the workers representation.[8]

The fundamental unit in medium-sized and large undertakings was the works council which had to be composed of at least three members and not more than thirty, depending on the number of employees.[9] This works council represented the common interests of the whole staff.

The works council was subdivided into two groups: one, forming the council of wage earners *(Arbeiterrat)*; and the other, the salaried employees council *(Angestelltenrat)*. Whereas the works council took care of the common interests of the whole staff, the wage earners council and the salaried employees council were concerned with the special interests of their respective groups. Each group, wage earning and salaried employees, appointed its delegates by direct secret ballot.[10]

Where an employer operated several enterprises of a similar nature in the same or in a neighbouring community, a joint works council *(Gesamtbetriebsrat)* could be set up to act side by side with the councils for the individual works. The individual councils could be completely eliminated and replaced by a common works council *(Gemeinsamer Betriebsrat)*, should the separate councils so decide.[11]

III.

Election of the Councils

The works council was elected by direct, secret ballot of the employees with proportional representation.[12] The candidates for election from each group, the wage-earners and salaried employees, were nominated by lists.[13] Each list had to contain at least twice as many

names as the total number of representatives to which the group was entitled.[14]

The election was managed by a committee composed of three employees. The retiring council appointed this committee at least four weeks before the expiration of its term.[15] In a newly established enterprise, the employer had to nominate the three senior employees as the election committee.

The term of office was one year[16]—with re-election permitted. In practice most of the works councils members in important enterprises held their office for many years.

The right to vote was granted to all employees at least eighteen years of age, regardless of nationality, sex, and period of employment.[17]

On the other hand, candidates for election had to be German citizens, not less than 24 years old, who had worked at least three years in the trade and six months in the plant.[18]

The election proceedings were exceedingly complicated.

The election committee had to issue a writ of election, not less than 20 days prior to the election. The writ had to state the number of work councils and supplementary members to be elected from each group (wage-earners and salaried employees) as well as the place where the election register could be inspected.

Objections to candidates had to be brought to the chairman of the election committee within three days after the posting of the register, whereupon the election committee had to render a decision.[19]

The vote had to be deposited in the ballot box in the presence of the voters.[20] The election committee opened the ballot boxes, counted the votes cast for each list and at the same time investigated the validity of the ballot.[21] Furthermore, it had to record the total number of votes cast for each list, to announce the result not later than the third day after the election,[22]

and to display it for two weeks in the same place where the writ of election had been posted.[23]

The validity of the elections could be disputed during the two-week period in which the names were displayed.[24] Any infringement of the *essential* provisions governing election procedure invalidated the election.

IV.

Business Procedure

The office of works councils was honorary, and the sessions had to take place outside the regular hours of work. Should it be necessary, however, for an employee to spend working hours in the performance of council duties, no deduction from his pay was permitted.[25] Regular consultation hours, obligatory in all establishments with more than a hundred workers, was considered one of the justifiable absences from work. During these hours one or two members had to be in the office in order to receive the complaints or suggestions of the workers. In larger plants it was the practice to free one member of the council, usually the chairman, entirely from factory work. In medium-sized enterprises, however, the obligation to pay "the necessary loss of time" brought about numerous disputes as to the amount of time required for the performance of official duties.[26]

In addition, the employer had to bear the expense incurred by the operation of the works councils. He was required to provide the works council with the necessary office for meetings and consultation hours, writing materials and legal literature concerning their activity.[27]

As a rule only members of the council were permitted to attend the meetings. The German councils, unlike the works committees under the Whitley scheme in England,[28] were not joint bodies holding their meetings in association with the employers. However, the employer had the right to initiate a session of the works councils. He was entitled to participate in a session

called at his request.[29] To such a session a delegate from the association to which the employer belonged, also had to be admitted.[30]

In a more general way, the law granted the unions the right to be represented at the sessions of the works councils. At the request of one-fourth of the members of the works council, one delegate of the unions to which the employees of the establishment belonged, could be admitted to the sessions, but only in an advisory capacity. According to Section 47 of the Works Councils Act, one delegate for each of the trade unions represented at the works might be summoned in consultation to the meetings. The employer had no influence over the choice of the representative. According to the prevalent opinion the domiciliary rights of the employer had to give way to this right of the trade union delegates to enter the works premises without permission of the employer. Trade union delegates who disobeyed the demand to quit a workshop, were to be adjudged as not committing a breach of domestic peace.[31]

V.

Economic and Social Functions of Works Councils

The law endowed the councils with a two-fold function: on the one hand, to represent the economic interests of the workers in so far as such interests were not already represented by the trade unions; on the other hand, to secure the coöperation of the workers in the mechanism of production. There were consequently two types of duties: economic functions connected with the supervision of production, and social functions connected with labor questions. The idea was to create not only a unilateral representation of interests but also a body which should promote the interests of production.

1. *Economic functions.* These functions consisted of coöperating with management for the purpose of secur-

ing the highest possible efficiency of production[32] as well as introducing new labor measures.

Rights to information were granted the works councils in order to facilitate the execution of these—somewhat indefinite—duties.

(a) The employer had to furnish a quarterly report on the condition of the establishment and particularly on its output.[33]

(b) In addition to the quarterly report the employers with at least three hundred wage workers or fifty salaried employees, had to present to the works council a balance sheet and a statement of annual profits and losses for the past fiscal year.[34] The report had to be submitted not later than six months after the close of the business year, according to the regulations laid down in a special law.[35]

Finally, one or two members of the works councils were appointed delegates to the board of control *(Aufsichtsrat)* in every establishment having such a governing body. They were entitled to equal rights with the other members of the board (right to attend and to vote), except that the labor members received no remuneration.[36]

All these measures did not have the practical results expected from them. This part of the Works Councils Act was a new and constructive experiment calling for experience—expert knowledge which the great majority of employees did not possess. Due to a lack of business knowledge as well as to the hostile attitude of employers, the works councils, aside from isolated exceptions, never exercised any appreciable influence. The employers were strongly opposed to the works councils' gaining any insight into the financial and other conditions of their enterprise. They therefore thwarted the intention of the legislation by submitting unsatisfactory statements in their quarterly reports. These reports were far from providing a comprehensive and clear picture of the economic position of the establishment. They were confined to generalizations and refrained

from going into any detail as to the real problems of management.

The Balance Sheet Law had no better results. As with the quarterly statements, employers confined themselves to generalities or submitted to the works council only a copy of the summarized financial statements released for publication in the press. In their opinion they had serious reasons for keeping the works council in the dark, as these councils were also members of the trade unions and regarded themselves as their executive delegates in the shop. The employers fearing that such information would serve as a basis for fresh wage claims were inclined to present the figures in a misleading form, thus precluding any real inside knowledge of the enterprise.

The right of workers' representation on control boards was equally ineffective. Those companies which previously had established boards of control but were not legally required to do so, abolished them rather than accept a labor delegate in the board.

In those companies where control boards were obligatory, all functions extending beyond the minimum requirements were deleted. Furthermore, many companies altered their by-laws by removing important functions from the competence of the control board and transferring them to "special committees." Aside from this subterfuge nothing prevented the ordinary members of the board from meeting informally, as often as they liked, in the absence of labor members.

In trusts and cartels the most important functions of the separate control boards were transferred to the combined central board to which the workers representatives were not entitled to send delegates.

Nevertheless, labor was not disposed to throw the entire responsibility for the lack of success upon the obstructionist tactics of the employers. There were important factors on the workers' side which had to be taken into account. Like any other democratic innovation in its early stage, the new economic functions

failed because of the lack of experience. In national conferences of works council delegates it was freely admitted that a large percentage of the labor members did not understand the financial statements that were put before them.

2. *Social Functions.* As limited as were the achievements of the works councils in the economic field, so considerable were their accomplishments in all questions directly concerned with the social sphere. In this field their functions were both supervisory and coöperative with respect to engagement and dismissal.[37]

Supervisory Functions. The works councils were entrusted with the supervision of the execution of all legal provisions for the benefit of the employee. In their supervisory capacity the councils had to assure the observation of the collective agreements.

While in this respect they were the local agents of the trade unions in the shop, in other matters—prevention of accidents and the promotion of works hygiene —they acted also as the executive agents of the State machinery. The supervision of the hygienic conditions in the factories and the enforcement of the labor protective laws, lay primarily in the hands of State factory inspectors. The Works Councils Act, however, entrusted the councils with the duty of assisting the factory inspectors in their task through suggestions and advice, as well as coöperation with them in order to prevent accidents and injury to health.[38] In this respect the councils were virtually a part of the State machinery. In their official reports the factory inspectors recognized the increasing activity of the works councils in this field and their salutary influence on the rank and file of employees.[39]

Works Welfare Institutions. The works council was entitled to participate in the administration of pension funds and housing or other welfare schemes attached to the establishment. The councils had the right to be represented on any managing committee or other body responsible for the administration of the welfare institutions.[40]

VI.

Engagement and Dismissal

By far the most important duties of the works councils related to the engagement and dismissal of employees. It is to be noted, however, that the powers of the works councils were considerably wider with respect to dismissals than to engagements.

Engagements. In principle the employers had the right to select their staff at their own discretion. "The employer shall decide independently without either the coöperation or the supervision of the group councils *(Arbeiter-und Angestelltenräte)* as to the engagements of individual employees."[41] If, however, as a result of the extension of the establishment or of the introduction of new technical methods it became necessary to engage a large number of employees, the employer had to discuss with the works council the nature and scope of the necessary engagements. The courts interpreted this provision to mean that the employers were obliged "only to make an earnest and real effort in order to reach a settlement with the council."[42] In the event of disagreement, the employer had complete freedom in hiring.

Some times trade unions succeeded in establishing rules for engagements by means of collective agreements. In the absence of such regulations by collective agreements, the Works Councils Act required[43] that settlements between the works councils and the employers as to the "general principles" *(Richtlinien)* for the engagement of employees be concluded. These general principles fixed the number of apprentices, the proportion of skilled and unskilled workers, the engagement of foreigners, the proportion of workers with and without dependents, the re-employment of workers formerly employed in the plant and dismissed because of lack of work. They gave the worker the guarantee that his engagement would depend neither upon his political or religious conviction nor upon his trade union activities.[44]

Dismissals. The law gave the workers valuable guarantees against arbitrary dismissal. This section of the Works Council Act was widely applied, and worked in an effective and practical manner.

Prior to the enactment of the Works Council Act no check whatsoever on dismissals existed, provided the legal or contractual notice was respected. Only in cases of dismissal without notice was the employee entitled to an indemnity equivalent to the amount of wages for the period of notice, where such dismissal was not justified by "serious reasons."[45]

The Works Council Act introduced an extended protection against all dismissals, whether summary or with due notice. Under the new provisions an employee, after receiving notice, might appeal within five days to the group council (wage earning or salaried employee council)

(a) if there was a justified suspicion that the notice resulted from political, religious or trade union activity

(b) if notice was given without stated reasons

(c) if the notice followed the refusal of the employee to do permanently other work than that for which he had been hired

(d) if the notice imposed an unfair hardship *(unbillige Härte)* on the employee which neither the conduct of the employee nor the conditions of the undertaking could justify."[46]

If the employee was dismissed without the observance of the legal or contractual notice, the appeal could be based upon the absence of any such reason.[47]

The right to protest was granted only for individual dismissals, and did not apply to mass dismissals necessitated by total or partial suspension of the plant.[48]

In case of dismissals on a large scale, the employer had to notify the works council as far in advance as possible concerning the nature and scope of the dismissals and to discuss the means for avoiding hard-

ship,[49] provisions similar to those in cases of mass engagements.[50]

The appeal procedure in cases of individual discharge was as follows:

The discharged employee appealing to the group council had to state the reasons for the protest and to present evidence in support of his case. If the council considered the protest justified, he had to attempt to bring about an understanding with the employer. Should a settlement not be reached within a week, the group council or the dismissed employee could appeal to the labor court within the following five days.[51]

If the labor court approved the protest, the employer was left with two alternatives. Either he could reinstate the dismissed worker, or if he refused to do this, he was required to pay an indemnity to the discharged employee. In case of reinstatement the employee was entitled to the wages for the interval between his dismissal and re-employment.

If the employer declined re-employment, the amount of compensation depended upon the number of years of employment, but the maximum award could not exceed the salary for six months of the previous year's earnings.[52]

VII.

The Protection of Works Councilors Against Dismissal

Special protection was granted to the workers representatives against dismissal. The nature of their functions was such that it often brought the works councils into opposition with employers. As the councilors had to safeguard the interest of their fellow employees, conflicts between them and employers were unavoidable.

In his capacity of works councilor the employee confronted the employer not as a subordinate employee, bound to obedience by virtue of a labor contract, but as a negotiator on an equal footing by virtue of public

law. The independent fulfillment of this task required an increased protection against his own dismissal, so that the employer could not be tempted to get rid of the councilors and thus sabotage the functioning of the works council.

For these reasons the Works Council Act provided that no member of the works council could be discharged without the consent of the workers representative body as a whole, by a majority vote.[53]

If the works council refused its consent to the proposed dismissal of the concerned member, the employer could appeal to the labor court whose decision superseded that of the workers representative body. Pending the decision, the affected member of the works council had to be employed as before.[54]

The special protection against dismissal extended also to the transfer of a works council member from one establishment of an undertaking to another. No approval of the works council was required in the discharge of a works councilor in case of complete shutdown of a plant, or when a member of the works council was guilty of misconduct which made him subject to summary dismissal.[55]

These provisions, on the one hand, protected the works council members against unjustified discharge and, on the other hand, the employer against any abuse of privileges on the part of the workers representatives.

VIII.

Works Councils and Trade Unions[56]

Works councils and trade unions had in common the representation of labor interests in relation to the employer. It was therefore necessary to delimit their spheres of activity so that they would not cross and overlap. In drafting the Works Councils Act special care was taken to prevent the councils from encroaching on the sphere of operation of the trade unions.

A sharp distinction was drawn between the basis, the structure, the competency and objectives of these two bodies. While the unions were voluntary organizations united through similar ideas and divided according to craft, the structure of the works council was dependent upon the legal grouping of the staffs of the individual enterprise—irrespective of craft or skill, regardless of whether they belonged to the same or another union, and regardless of whether they were organized or unorganized. The works council was elected by and represented all the employees in an establishment.

While the works council had both its basis and its scope in the plant but comprised all workers without distinction, the functions of the trade union extended beyond the enterprise but were limited to its members.

The duties of the works councils were fixed by law and were confined to the interests of the plant. The trade unions were free in their objectives and restricted only by the nature of those objectives.

Experience proved that trade union rights were never weakened but, in fact, supplemented and even strengthened by the workers representation in the shop.

IX.

Results

The works councils never exercised any appreciable influence in questions of production during the short period in which they operated, but they achieved considerable results in the social field where they secured valuable guarantees for the workers and afforded them far-reaching protection against arbitrary dismissal. The social functions were consequently the most important from the point of view of practical results.

The fact that the works councils proved weak and least effective in that part of their functions which was concerned with the mechanism of production, does not imply that this side of the act was a complete failure. There were numerous cases in which the councils had

rendered valuable service by putting forward constructive and helpful proposals in regard to the organization of the workshops and even suggestions regarding general business questions.

But much more important than these minor achievements was the stimulus which these functions gave to the practical and theoretical education of the workers. However imperfect the results of the law were in this respect, it remains true that tens of thousands of employees by serving on the works councils were brought each year into touch with the wider aspects of industry and were given the opportunity of realizing something of the work of management.

In addition to this practical experience, the institution of the councils did a great deal to encourage adult education in such subjects as economic theory, industrial organization, finance of industry, bookkeeping, etc. The trade unions created special secretariats to deal with the works council questions in general. The importance of training the members of works councils was universally recognized. In addition to the various courses of instruction organized by trade unions, permanent works council schools and labor colleges were established in order to familiarize the works councils with their new tasks and the various problems with which they were confronted.

B.

Worker Delegates in France[57]

I.

Origins

The idea of workers representation in the shop was not unknown in France prior to the law of June 24, 1936,[58] which established worker delegates. Two types had existed: delegates to secure safety in the mines,[59] and delegates in armament factories who functioned toward the end of the First World War. The former were

the executive agents of the labor inspectors and, in this regard, subject to the authority of the Minister of Labor; consequently they were auxiliaries of the labor inspectors rather than worker spokesmen before management. Such was not the case with the latter who were really the fore-runners of the worker representatives created in June, 1936.

It was in munition factories in 1917 that worker delegates were first established for the purpose of preventing or settling labor conflicts. This institution was not based on law or decree but on the proposal of the Minister of Armament who issued a ruling in two circulars, dated July 24, 1917, and September 25, 1917, which became standard throughout the defense industry.[60]

The duties of the delegates were as follows:

1. To study in each shop unsatisfied individual grievances; to transmit and discuss them with management; to intervene in any differences arising out of the application of rulings governing wage scales and other working conditions as, for example, sanitary and safety measures;

2. To be the spokesmen of the workers in order to suggest to management those measures and processes which might increase production;

3. Finally, to constitute before management the "necessary spokesmen for the safeguarding of the dignity of the personnel of the shop."

"Too often," reads the circular of September 25, 1917, "in a population so sensitive and conscious of its rights as ours, conflicts have arisen having no other origin than the awkwardness of certain petty agents of the employer and their lack of respect for the dignity of the workers, incidents which might have been prevented and settled through an appropriate intervention on the part of the delegate before management."

Nevertheless, the unions as a whole did not favor wholeheartedly the institution of worker delegates. They feared that the delegates would assume too much

independence and thus avoid union control.

Employers were opposed to the delegates upon the ground that they would interfere with the smooth functioning of the enterprise. Obviously they feared a diminishing of their authority just as the unions feared a lessening of their influence.

It is therefore not surprising that this institution did not survive the particular circumstances which brought about its creation. The end of the war saw the end of workers representation in the shop. Out of 347 enterprises in which delegates were established, only 62 remained in 1920 and these disappeared completely in the following years. It was not until 1936 that workers representation in the shop came to life again under the new social reforms—of course, under quite different circumstances and with even more limited powers than those vested in the war worker delegates.

II.

General Principles and Functions of the Worker Delegates

The new institution of worker delegates was established through the Matignon Agreement, and confirmed by the law of June 24, 1936, which reads as follows:

"The worker delegates elected by the personnel in establishments employing more than 10 persons are qualified to present to the management those individual grievances, not directly settled, concerning the application of wage scales, the labor code and other laws and decrees with respect to workers' protection."

According to this text the delegates were not directly created by law. The statute, moreover, imposed upon the parties of the collective agreements the duty of establishing such delegates. As the appointment of worker delegates was dependent on the existence of a collective agreement, those establishments which were not covered by trade agreements had no delegates, even when they employed more than 10 workers.

The delegates' functions were extremely limited. Their rights were confined to the task of transmitting to management, individual complaints of their fellow workers with respect to the application of wage scales and regulations concerning workers' protection.

All questions concerning the entire staff, or any group, were beyond the scope of their powers. The French worker delegates had neither supervisory functions nor any right of investigation. Consequently, their duty was quite different from that of the delegates designated to secure safety in the mines, who had to investigate in case of accidents. They had the right and duty to check their section as to the functioning of safety and sanitary measures, and to report any infractions.

It is true the scope of the worker delegates established through the new law was larger, inasmuch as it was not limited to matters of safety and sanitation but covered all working conditions. Their power, however, was insignificant as their intervention was confined to only those cases where individual complaints could not be settled directly.

III.

Election and Business Procedure

Contrary to the German system which provided for two types of representation (shop stewards in establishments having from five to nineteen employees, and works councils in undertakings employing not less than twenty persons), the French law provided for only one type of representation: the worker delegates and their alternates, to be elected in establishments employing more than ten persons.

The number of delegates was proportionate to the size of the establishment. The collective agreement of the metallurgical industry of the Paris district, which served as a model for most subsequent trade agreements, provided for one delegate and one alternate for

agonized grimaces and start to beg for money with a penetrating professional whine.

The church is half in ruins, with a big hole in the roof at the west end; an inconvenience to worshippers on wet days but a boon to photographers on sunny ones. You can take pictures of the service and the congregation by natural light. The Indians enter the church in an orderly procession and kneel on the earth floor. When the Host is elevated, they blow conch-shell horns. The priest preaches in Quechua. When Mass is over, he interviews the mayors of the neighbouring villages, arranging what offerings he shall receive from each; a lamb, or a pair of chickens, or a basket of eggs.

Every mayor carries a ceremonial staff of office, decorated with silver bands. The priest blesses these staffs. Then one of the mayors takes them all in the crook of his arm, kneels down and says a prayer, while the others stand round. Each mayor comes forward in turn, walks a circle around the staff-holder and approaches to receive his staff. Both men kiss it before it is taken away. This may be one of the many pieces of Incaic ritual which have been adopted into the practice of Indian Christianity.

I disliked the drive home even more than the drive to Pisac, especially as we were now keeping to the outer edge of the road. As the Penards weren't in the car with us and there was no need to act brave in front of Sarita, I frankly shut my eyes and asked Caskey to tell me when it was all over.

One of the Protestant missionaries we met on the train came to see us later in the day and stayed to supper. A decent man in his own way; hardworking, honest and charitable—except where the Catholics are concerned. He started off by telling us a story about a ranch in Bolivia, near a town where he himself had worked for many years. An Indian on this ranch found a small image of a Christian saint in his field. He took it to the local priest who said that this was a miracle and that the Indian should build a shrine on the spot at his own expense. So the Indian went to the ranch-owner to ask for an advance on his wages. The owner asked to see the image. It was stamped 'Made in Germany'. The priest had buried it there himself. He was forced to leave the district in disgrace.

This story is true, no doubt, but the missionary went on to generalize from it. According to him, nearly all Catholic priests in South America are greedy, lazy and corrupt. Most of them are the fathers of children, and they squeeze exorbitant offerings from their congregations in order to support their mistresses. They also make

This election procedure, not subject to any appeal, was most simple as compared with the complicated German provisions.

Business procedure. The delegates carried out their functions within working hours. The collective agreements provided in general that the delegates could devote a certain number of hours monthly to their duties, but that the working hours could not be less than 75% of the average working time. As with the German works councils, the French worker delegates performed their functions without remuneration. But they were entitled to an indemnity equal to the wages lost through the execution of their duties.

Management received the delegates once a month on days and hours fixed in advance and posted in the workshops. In urgent cases, however, grievances could be presented at any time.

Generally, delegates were received individually accompanied only by the alternates. This system was based on the opinion that a compromise could be more easily effected when the points at issue were discussed by the principals of both sides. Individual complaints of a more general nature had to be discussed in the presence of all the delegates.

The *alternates* took the place of the delegates who resigned or were temporarily unable to perform their functions. In addition, they accompanied the delegates in their discussion with management.

Protection against dismissal. The French law did not grant such far-reaching protection to the delegates as the German law gave to the members of the works councils. The latter could not be dismissed without the consent of the works council as a whole or, in case of its refusal, by the consent of the labor court. Also in France collective agreements had to state that a delegate could not be dismissed because of his devotion to his duties. Yet no special sanction was imposed for failure to observe this proviso.

IV.

Worker Delegates and Trade Unions

German unions had favored the works councils without reserve, and experience proved that trade union rights were not weakened but rather strengthened by workers representation in the shop.

The French unions, on the other hand, had no uniform policy toward worker delegates. Opportunistic reasons prevailed over basic principles. They did not wholeheartedly favor the delegates and supported them only where they were in a position to control them. They wanted the delegates to be, in effect, their executive agents in the shop. A collective agreement's clause amply reflects the unions' concern at any interference in their sphere of influence: "The delegates can in no way trespass on the unions' right to intervene on behalf of the workers in the carrying out of the collective agreement and in their right to intervene in all conflicts which might arise between delegates and management."

The vacillation of the trade unions on this question was further revealed in an article by Léon Jouhaux, the head of the General Confederation of Labor, in *"La Voix du Peuple"* [61] which reads: "It is indispensable for the unions to organize and control the elections and supervise the functioning of the delegates, if one wishes them to produce the results which labor expects. This does not mean that we desire to evade universal suffrage. No, it is quite certain that the delegates should be elected by the personnel of the establishments. But the candidates should be nominated by the union and should remain under its control. Of course, they must account to the personnel of the factory but they must at the same time account to their union. Only in this way can they fulfill the mission with which they are entrusted."

As both management and labor unions took an aloof attitude toward worker delegates, it is not surprising that they led a shadow existence rather than serving as a real economic factor.

V.

Conclusion

In contrast to the German system which desired to implant in the works councils the seeds of social reform, the aims of the French system were extremely limited. In Republican Germany the idea was to give labor a sense of security and dignity, and organic relationship within the productive mechanism of modern industry through entrusting the works councils with economic and social functions. The French Popular Front Government, because of the attitude of both labor and management, considered the worker delegates of secondary importance.

It becomes obvious at first glance that the worker delegates were not even directly established by law, but only indirectly through collective agreements. Consequently, all enterprises which were not covered by trade agreements had no workers representation.

The German works councils had important functions. Their rights were particularly significant in the social sphere where they achieved considerable results in all questions concerning engagement and dismissal of employees as well as health and social welfare. The French worker delegates, on the other hand, were not entrusted with such functions. Their rights were confined to the task of presenting to management individual complaints which could not be settled directly.

FOOTNOTES TO CHAPTER V

[1] Systematic studies: Feig in *Handwörterbuch der Staatswissenschaften* 4. edition, vol. 2, p. 625 et seq. Nipperdey in *Handwörterbuch der Rechtswissenschaft*, vol. 1, p. 717 et seq. Erdel "Betriebvertretung"; Leipzig, 1923. The most important commentaries are those of: Flatow-Kahn-Freund, 13. edition (1931), Mansfeld, 3. edition (1930), Feig-Sitzler, 14. edition (1931). Short studies in English language: Boris Stern *Works Council Movement in Germany*, Washington, D. C., 1925; Guillebaud *The Works Council—a German Experiment in Industrial Democracy*, 1928. R. Seidel *The Trade Union Movement of Germany*, International Trade Union Library No. 7-8.

[2] Eduard Bernstein "The German Works Councils Act" in *International Labor Review*, 1921, p. 34.

[3] *Reichsgesetzblatt*, 1916, p. 1333.

[4] Wilhelm Roemer *Die Entwicklung des Rätegedankens in Deutschland.*

[5] Section 165.

[6] *Reichsgesetzblatt*, 1920, p. 147.

[7] Works Councils Act, Section 1.

[8] Section 2.

[9] Section 15.

[10] Section 18.

[11] Sections 50 and 51.

[12] Section 18.

[13] Election ruling, Section 2.

[14] Election ruling, Section 5.

[15] Works Councils Act, Section 23, election ruling, Section 1.

[16] Section 18, subsection 2.

[17] Section 20, subsection 1.

[18] Section 20, subsection 2.

[19] Election ruling, Section 3.

[20] Election ruling, Section 10.

[21] Election ruling, Section 12.

[22] Slection ruling, Sections 11 and 16.

[23] Election ruling, Section 18.

[24] Election ruling, Section 19.

[25] Section 35.

[26] Mansfeld ibid p. 202 et seq. Flatow-Kahn-Freund, p. 199, et seq. Federal Labor Court in *Bensheimer Sammlung*, vol. 2, p. 254, vol. 9, p. 339, vol. 13, p. 208.

[27] Section 36.

[28] Guillebaud ibid, p. 14.

[29] Section 29, subsection 2.

[30] Section 31, subsection 2.

[31] cf. Flatow-Kahn-Freund ibid footnote 7 to Section 45.

[32] Section 66, subsection 1.

[33] Section 71.

[34] Section 72.

[35] Balance Sheet Law of February 5, 1921 *(Reichsgesetzblatt,* 1921, p. 159) for details cf. Goeppert "Das Betriebsbilanzgesetz" in *Neue Zeitschrift für Arbeitsrecht,* 1921, p. 113; Potthoff *Die sozialen Probleme des Betriebs,* 1925, p. 37; Koch *Betriebsbilanz, Betriebsgewinn-und Verlustrechnung,* Berlin, 1921.

[36] Section 70 and Law of February 15, 1922 *(Reichsgesetzblatt,* 1922, p. 209, cf. Jacusiel *Die Rechtsstellung der Betriebsratsmitglieder im Aufsichtsrat,* Berlin, 1923.

[37] "Engagement and Dismissal" are treated separately in behalf of their importance in the following chapter.

[38] Section 66, subsection 8 cf. Syrup "Betriebsrat und Arbeiterschutz" in *Arbeit,* 1924, p. 344.

[39] Reports of the Industrial Inspectors, Prussia, 1920-1932.

[40] Section 66, subsection 9.

[41] Section 81, subsection 4.

[42] Feig-Sitzler, Footnote 3 to Section 74, Federal Labor Court, November 5, 1930, *Bensheimer Sammlung,* vol. 10, p. 302.

[43] Section 78, subsection 8.

[44] Section 81.

[45] Section 626 German Civil Code.

[46] Section 84, subsection 4.

[47] Section 84, last paragraph.

[48] Section 85.

[49] Section 74.

[50] cf. supra, p. 129.

[51] Section 86.

[52] Section 87.

[53] Section 96.

[54] Flatow-Kahn-Freund ibid, p. 583, et seq.

[55] Section 96, subsection 2.

[56] Flatow "Betriebsräte und Gewerkschaften" in *Neue Zeitschrift für Arbeitsrecht,* 1924, p. 385; Potthoff *Die sozialen Probleme des Betriebs,* p. 1, 17, 40, 212, 230, 245, 254, 280.

[57] André Pierre *Les Délégués Ouvriers,* Paris, 1937; Jean Louis Costa "Les Délégués Ouvriers d'après la Loi du 24 Juin 1936," *Revue d'Economie Politique,* 1937, p. 1394, et seq. (Année 51).

[58] *Journal Officiel,* June 26, 1936, p. 6699 (Section 31 vc-2nd title, first book of the French Labor Code).

[59] established by the law of July 8, 1890; cf. Sections 120 to 157, 2nd Book, 3rd Title of the French Labor Code.

[60] cf. Oualid and C. Picquenard "Collection d'Histoire économique et sociale de la guerre mondiale"—*Publication de la dotation Carnégie*, p. 420, et seq. "Les Délégués Ouvriers."

[61] 1936, p. 370.

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